(17)

No. 99-582-CFX Title: United States, Petitioner
v.
Richard A. French, et al.

Docketed: October 4, 1999
Court: United States Court of Appeals for the Seventh Circuit

Vide:
99-224

| Entry | Date | Proceedings and Orders |
|---|---|---|
| | Jul 23 1999 | Application (99A88) to extend the time to file a petition for a writ of certiorari from August 4, 1999 to September 3, 1999, submitted to Justice Stevens. |
| | Jul 29 1999 | Application (99A88) granted by Justice Stevens extending the time to file until September 3, 1999. |
| | Aug 20 1999 | Application (99A88) to extend further the time to file a petition for a writ of certiorari from September 3, 1999 to October 3, 1999, submitted to Justice Stevens. |
| | Aug 23 1999 | Application (99A88) granted by Justice Stevens extending the time to file until October 3, 1999. |
| | Oct 4 1999 | Petition for writ of certiorari filed. (Response due November 3, 1999) |
| | Oct 28 1999 | Waiver of right of respondents Charles B. Miller, et al. to respond filed. |
| | Nov 1 1999 | Brief of respondents Richard A. French, et al. in opposition filed. VIDED. |
| | Nov 17 1999 | DISTRIBUTED. December 3, 1999 |
| | Nov 17 1999 | Reply brief of petitioner United States filed. |
| | Dec 6 1999 | Petition GRANTED. The cases are consolidated and a total of one hour is allotted for oral argument. SET FOR ARGUMENT April 18, 2000. ********** |
| | Jan 5 2000 | Order extending time to file petitioners' briefs on the merits to and including February 3, 2000. Respondent'sbrief is due on or before March 6, 2000, and reply briefs are due on or before April 5, 2000. |
| | Jan 28 2000 | Brief amici curiae of Americans for Effective Law Enforcement, Inc., et al. filed. VIDED. |
| | Feb 3 2000 | Joint appendix filed. VIDED. |
| | Feb 3 2000 | Brief of petitioners Charles B. Miller, Superintendent, et al. filed. VIDED. |
| | Feb 3 2000 | Brief of petitioner United States filed. VIDED. |
| | Feb 3 2000 | Brief amici curiae of Washington Legal Foundation, et al. filed. VIDED. |
| | Feb 3 2000 | Brief amici curiae of National Governors' Association filed. VIDED. |
| | Feb 3 2000 | Brief amicus curiae of Criminal Justice Legal Foundation filed. VIDED. |
| | Mar 2 2000 | Record filed. |
| | Mar 3 2000 | Record filed. |
| | Mar 6 2000 | Brief amicus curiae of Public Citizen filed. VIDED. |
| | Mar 6 2000 | Brief of respondents Richard French, et al. filed. VIDED. |
| | Mar 6 2000 | Brief amici curiae of Plaintiff Class of Prisoners in Taylor |

2 pp

No. 99-582-CFX

| Entry | Date | Proceedings and Orders |
|---|---|---|
| | | v. Arizona filed. VIDED. |
| | Mar 6 2000 | Brief amici curiae of Erwijn Chemerinsky, et al. filed. VIDED. |
| | Mar 9 2000 | CIRCULATED. |
| | Mar 15 2000 | Motion of the petitioners for divided argument filed. |
| | Mar 30 2000 | Motion of petitioners United States and Charles B. Miller for divided argument DISTRIBUTED. |
| | Apr 3 2000 | Motion of the petitioners for divided argument GRANTED. and the time is divided as follows: 20 minutes for the Solicitor General, 20 minutes for petitioners Miller, et al., and 20 minutes for respondents. |
| | Apr 5 2000 | Reply brief of petitioner United States (TBP) filed. VIDED. |
| | Apr 10 2000 | Reply brief of petitioners Charles B. Miller, et al. filed. VIDED. |
| | Apr 18 2000 | ARGUED. |

FILED

99 582 OCT - 4 1999

OFFICE OF THE CLERK

No.

# In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD A. FRENCH, ET AL.

*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

## PETITION FOR A WRIT OF CERTIORARI

SETH P. WAXMAN
*Solicitor General*
*Counsel of Record*
BILL LANN LEE
*Acting Assistant Attorney General*
BARBARA D. UNDERWOOD
*Deputy Solicitor General*
IRVING L. GORNSTEIN
*Assistant to the Solicitor General*
MARK L. GROSS
MARIE K. MCELDERRY
*Attorneys*
*Department of Justice*
*Washington, D.C. 20530*
*(202) 514-2217*

## QUESTIONS PRESENTED

Under the automatic stay provision of the Prison Litigation Reform Act of 1995 (PLRA), 18 U.S.C. 3626(e) (Supp. III 1997), the filing of a motion to terminate prospective relief shall operate as a stay during the period beginning 30 days after the filing of the motion and ending on the date the court rules on the motion. A court may postpone the effective date of the automatic stay for not more than 60 days for good cause, and any order staying, suspending, delaying, or barring the operation of the automatic stay (other than a postponement for not more than 60 days) is appealable under 28 U.S.C. 1292(a)(1). The questions presented are:

1. Whether a district court has authority to suspend the automatic stay under traditional equitable standards.

2. Whether the automatic stay provision violates constitutional separation-of-powers principles.

## PARTIES TO THE PROCEEDING

The petitioner is the United States.

The private respondents are Richard A. French, Morris E. Dozier, Martin W. Bradberry, Henry C. Jennings.

The state respondents are Charles B. Miller, Superintendent of the Pendleton Correctional Facility, Edward I. Cohn, Commissioner, Indiana Department of Correction, and Herbert Newkirk, Regional Director, Indiana Department of Correction.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Opinion below | 1 |
| Jurisdiction | 1 |
| Statutory provisions involved | 2 |
| Statement | 2 |
| Reasons for granting the petition | 9 |
| Conclusion | 19 |
| Appendix A | 1a |
| Appendix B | 36a |
| Appendix C | 38a |
| Appendix D | 40a |


## TABLE OF AUTHORITIES

Cases:


| | |
|---|---|
| *Benjamin* v. *Jacobson*, 172 F.3d 144 (2d Cir. 1999), petition for cert. pending, No. 98-2042 | 18 |
| *Berwanger* v. *Cottey*, 178 F.3d 854 (7th Cir. 1999) | 18 |
| *Califano* v. *Yamasaki*, 442 U.S. 682 (1979) | 13 |
| *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922 (1975) | 12, 15 |
| *Dougan* v. *Singletary*, 129 F.3d 1424 (11th Cir. 1997), cert. denied, 118 S. Ct. 2375 (1998) | 18 |
| *French* v. *Owens*, 538 F. Supp. 910 (S.D. Ind. 1982), aff'd in part, vacated in part, 777 F.2d 1250 (7th Cir. 1985), cert. denied, 479 U.S. 817 (1986) | 4 |
| *Gavin* v. *Branstad*, 122 F.3d 1081 (8th Cir. 1997), cert. denied, 118 S. Ct. 2374 (1998) | 18 |
| *Hadix* v. *Johnson*, 133 F.3d 940 (6th Cir.), cert. denied, 118 S. Ct. 2368 (1998) | 18 |
| *Hadix* v. *Johnson*, 144 F.3d 925 (6th Cir. 1998) | 6, 9, 10, 11, 16, 17-18 |
| *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792) | 17 |
| *Hecht Co.* v. *Bowles*, 321 U.S. 321 (1944) | 13 |

Cases—Continued: Page

*Imprisoned Citizens Union* v. *Ridge*, 169 F.3d 178 (3d Cir. 1999) ..... 18
*Inmates of Suffolk County Jail* v. *Rouse*, 129 F.3d 649 (1st Cir. 1997), cert. denied, 118 S. Ct. 2366 (1988) ..... 18
*Jones* v. *United States*, 119 S. Ct. 1215 (1999) ..... 17
*Nichols* v. *Hopper*, 173 F.3d 820 (11th Cir. 1999) ..... 18
*Pennhurst State School & Hosp.* v. *Halderman*, 465 U.S. 89 (1984) ..... 4, 5
*Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855) ..... 18
*Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) ..... 6, 17
*Plyler* v. *Moore*, 100 F.3d 365 (4th Cir. 1996), cert. denied, 520 U.S. 1277 (1977) ..... 18
*Porter* v. *Warner Holding Co.*, 328 U.S. 395 (1946) ..... 13
*Roche* v. *Evaporated Milk Ass'n*, 319 U.S. 21 (1943) ..... 16
*Ruiz* v. *Johnson*, 178 F.3d 385 (5th Cir. 1999) ..... 9, 10, 11, 16, 17
*United States* v. *Gainey*, 380 U.S. 63 (1965) ..... 10
*United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871) ..... 7
*United States* v. *X-Citement Video, Inc.*, 513 U.S. 64 (1994) ..... 17
*Yakus* v. *United States*, 321 U.S. 414 (1944) ..... 12

Constitution and statutes:

U.S. Const.:
Art. III ..... 6, 17
Amend. XI ..... 5
Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Tit. VIII, §§ 801-810, 110 Stat. 1321-66 to 1321-77 ..... 2



Statutes—Continued: Page

§ 802, 110 Stat. 1321-68 (18 U.S.C. 3626(e)(1)-(2) (Supp. III 1997)) ..... 4, 43a
§ 802(b), 110 Stat. 1321-70 (18 U.S.C. 3626 note) ..... 3
Prison Litigation Reform Act Amendments of 1997, Pub. L. No. 105-119, § 123(b), 111 Stat. 2471 (18 U.S.C. 3626 note) ..... 5
Speedy Trial Act of 1974, 18 U.S.C. 3161 *et seq.*:
18 U.S.C. 3161 ..... 8
18 U.S.C. 3162(a)(2) ..... 8
11 U.S.C. 362(a)(2) (Supp. III 1997) ..... 8
18 U.S.C. 3626(a)(1)(A) (Supp. III 1997) ..... 2, 40
18 U.S.C. 3626(b)(1) (Supp. III 1997) ..... 3, 41a
18 U.S.C. 3626(b)(2) (Supp. III 1997) ..... 2, 41a-42a
18 U.S.C. 3626(b)(3) (Supp. III 1997) ..... 3, 42a
18 U.S.C. 3626(e)(1) (Supp. III 1997) ..... 3, 4, 16, 43a
18 U.S.C. 3626(e)(2) (Supp. III 1997) ..... 3, 13, 43a
18 U.S.C. 3626(e)(3) (Supp. III 1997) ..... 3, 4, 14, 15, 44a
18 U.S.C. 3626(e)(4) (Supp. III 1997) ..... 4, 16, 44a
28 U.S.C. 2403(a) ..... 5

Miscellaneous:

11A Charles Alan Wright et al., *Federal Practice & Procedure* (1995) ..... 12

# In the Supreme Court of the United States

No.

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD A. FRENCH, ET AL.

*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

## PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

### OPINION BELOW

The opinion of the court of appeals (App., *infra*, 1a-23a) is reported at 178 F.3d 437.

### JURISDICTION

The judgment of the court of appeals was entered on May 6, 1999. On July 29, 1999, Justice Stevens extended the time within which to file a petition for a writ of certiorari to and including September 3, 1999, and on August 23, 1999, Justice Stevens further extended the time for filing a petition to and including October 3,

1999 (a Sunday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATUTORY PROVISIONS INVOLVED**

The relevant statutory provisions are reproduced in the appendix to this petition. App., *infra*, 40a-43a.

**STATEMENT**

1. In 1996, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, Tit. VIII, §§ 801-810, 110 Stat. 1321-66 to 1321-77. The PLRA sets forth standards for the entry and termination of prospective relief in civil actions challenging conditions at prison facilities. Under the PLRA, prospective relief in prison conditions cases "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. 3626(a)(1)(A) (Supp. III 1997).

The PLRA provides for the "immediate termination" of relief that does not conform to that new statutory standard. 18 U.S.C. 3626(b)(2). It specifies that, "[i]n any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(b)(2) (Supp. III 1997). That statutory mandate is subject to an important qualification. "Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right,



and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. 3626(b)(3) (Supp. III 1997). A party may seek immediate termination even if the relief "was originally granted or approved before * * * the date of the [PLRA's enactment]." § 802(b), 110 Stat. 1321-70 (18 U.S.C. 3626 note 1996 Amendment).[1]

The PLRA establishes special procedures that govern motions for immediate termination. A court is required to "promptly rule" on a motion for immediate termination. 18 U.S.C. 3626(e)(1) (Supp. III 1997). When a court fails to issue a prompt ruling, mandamus "shall lie" as a remedy. *Ibid.* In addition, under the automatic stay provision, at issue here, the filing of a motion for immediate termination "shall operate as a stay during the period * * * beginning on the 30th day after such motion is filed * * * and * * * ending on the date the court enters a final order ruling on the motion." 18 U.S.C. 3626(e)(2) (Supp. III 1997). A court may "postpone the effective date of an automatic stay * * * for not more than 60 days for good cause," but no postponement is permissible "because of general congestion of the court's calendar." 18 U.S.C. 3626(e)(3) (Supp. III 1997). Any order "staying, suspending, delaying, or barring the operation of the automatic stay" (other than an order postponing the automatic stay under the 60 day postponement provision) is subject to

---

[1] Under 18 U.S.C. 3626(b)(1) (Supp. III 1997), all decrees, including those entered with the necessary findings, are also subject to periodic review to determine whether they remain necessary to remedy a constitutional violation. Section 3626(b)(1) provides for such review two years after the entry of relief, one year after a denial of a motion to terminate, and, in the case of pre-PLRA decrees, two years after the date of enactment. In April 1998, all pre-PLRA decrees became subject to periodic review.

appellate review. Such an order "shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28." 18 U.S.C. 3626(e)(4) (Supp. III 1997).[2]

2. In 1975, a class of inmates at the Pendleton Correctional Facility (respondents) filed suit against several Indiana prison officials (the State), alleging that the conditions at the facility violated state and federal law. After a trial, the district court found violations of state and federal law and entered a remedial order designed to correct those violations. *French* v. *Owens*, 538 F. Supp. 910 (S.D. Ind. 1982), aff'd in part, vacated in part, 777 F.2d 1250 (7th Cir. 1985), cert. denied, 479 U.S. 817 (1986). While an appeal from that judgment was pending, this Court held in *Pennhurst State School and Hospital* v. *Halderman*, 465 U.S. 89 (1984), that the

[2] As originally enacted, the automatic stay provision specified that "[a]ny prospective relief subject to a pending motion shall be automatically stayed," beginning on the 30th day after the filing of a motion for termination and ending on the date the court rules on the motion. § 802, 110 Stat. 1321-68. The 1997 amendments to the PLRA revised the automatic stay provision so that it now specifies that "[a]ny motion to modify or terminate prospective relief * * * shall operate as a stay," beginning on the 30th day after the filing of a motion for termination and ending on the date the court rules on the motion. Pub. L. No. 104-134, § 802, 110 Stat. 1321-68 (18 U.S.C. 3626(e)(1)-(2) (Supp. III 1997)). The 1997 amendments also added: (1) the provision authorizing mandamus when a court fails to rule promptly on a motion for termination, 18 U.S.C. 3626(e)(1) (Supp. III 1997); (2) the provision authorizing a court to postpone the automatic stay for 60 days for good cause, 18 U.S.C. 3626(e)(3) (Supp. III 1997); and (3) the provision authorizing an appeal from an order staying the automatic stay, 18 U.S.C. 3626(e)(4) (Supp. III 1997). Congress specified that the amendments "shall take effect upon the date of the enactment of this Act [Nov. 26, 1997] and shall apply to pending cases." Pub. L. No. 105-119, § 123(b), 111 Stat. 2471 (18 U.S.C. 3626 note).



Eleventh Amendment deprives federal courts of jurisdiction to issue prospective relief against state officers based on state law. The Seventh Circuit remanded the case to the district court for reconsideration in light of *Pennhurst*. See 777 F.2d at 1251.

On remand, the district court found that most of the state law violations also violated federal law. 777 F.2d at 1251. The district court also issued an amended remedial order that took into account improvements that had been made at the facility. *Ibid.* The Seventh Circuit affirmed in part and vacated in part. *Id.* at 1250. It upheld the provisions of the district court's order addressing overcrowding, double celling, improper use of mechanical restraints, inadequate medical care, unsanitary kitchen services, and insufficient staffing; it vacated the provisions addressing exercise and recreation, fire and safety, and protective custody. *Id.* at 1258. The parties resolved the remaining issues through joint stipulations.

3. In 1997, the State filed a motion under the PLRA for immediate termination of the district court's remedial orders. App., *infra*, 5a-6a. Respondents filed a motion for a preliminary injunction to suspend the operation of the automatic stay. *Id.* at 6a. The district court granted respondents' motion, finding that the automatic stay provision "is clearly unconstitutional," that respondents "[were] likely to succeed on the merits of their challenge to the automatic stay," and that the State "would not be harmed by the entry of a preliminary injunction." *Id.* at 36a-37a. The State appealed the order suspending the automatic stay, and the United States intervened in the appeal, pursuant to 28 U.S.C. 2403(a), to defend the constitutionality of the automatic stay provision. The United States argued that the automatic stay provision does not deprive a

court of authority to suspend the automatic stay in accordance with traditional equitable standards and that, when so construed, the automatic stay provision does not violate constitutional separation-of-powers principles.

4. The court of appeals affirmed the district court's order. App., *infra*, 1a-23a. The court of appeals interpreted the automatic stay as a legislative command that a stay of prospective relief occur no later than 90 days after the filing of a motion for termination. *Id.* at 9a-12a. The court expressly rejected the view of the United States and of the Sixth Circuit in *Hadix* v. *Johnson*, 144 F.3d 925 (1998), that a court has inherent authority to suspend the automatic stay in accordance with traditional equitable standards. *Ibid.* The court noted that the statutory text provides that the filing of a motion for termination "shall" operate as a stay and that the stay would be "automatic." App., *infra*, 12a. The court also observed that the text of the automatic stay provision "specifie[s] not only a clear starting point, but also the ending point for the stay." *Ibid.* The court concluded that "[e]ven though we do not lightly assume that Congress meant to restrict the equitable powers of the federal courts, we find it impossible to read this language as doing anything less than that." *Ibid.*

The court then ruled that the automatic stay provision "violates the separation of powers principle because it is a direct legislative suspension of a court order." App., *infra*, 18a. The court noted that in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 218-219 (1995), this Court stated that Article III "gives the Federal Judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy." App., *infra*, 19a. The



court of appeals concluded that the automatic stay provision violates that principle because it "places the power to review judicial decisions outside of the judiciary: it is a self-executing legislative determination that a specific decree of a federal court * * * must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place." *Ibid.*

The court of appeals also concluded that the automatic stay provision violates the separation-of-powers principle established in *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871). App., *infra*, 19a-20a. The court characterized *Klein* as holding that "Congress does not have the power to impose a rule of decision for pending judicial cases, apart from its power to change the underlying applicable law." *Id.* at 20a. The court concluded that the automatic stay provision "falls comfortably within the rule of *Klein*," because it mandates that prospective relief must be terminated during the pendency of the case. *Ibid.*

Because its reasoning was "sufficiently at odds" with the reasoning of the Sixth Circuit in *Hadix*, the panel circulated its opinion to the full court for the purpose of determining whether the case should be reheard en banc. App., *infra*, 23a n.3. A majority of the judges in regular active service did not vote to hear the case en banc. *Ibid.*

Judge Easterbrook (joined by Chief Judge Posner and Judge Manion) dissented from the denial of rehearing en banc. App., *infra*, 23a-35a. The dissenters agreed with the panel that a district court does not have authority to suspend the automatic stay under traditional equitable standards. *Id.* at 23a. The dissenters concluded, however, that the automatic stay

provision, as so construed, does not violate separation-of-powers principles.

The dissenters disagreed with the panel's conclusion that the automatic stay provision unconstitutionally interferes with a court's ability to adjudicate a case. App., *infra*, 26a-30a. In their view, the automatic stay provision simply "goads" courts to rule promptly on the merits of a motion for termination, *id.* at 28a, and the Constitution does not give courts an immunity from deadlines, *id.* at 28a-29a. The dissenters also disagreed with the majority's conclusion that the automatic stay provision violates the rule in *Klein*. They reasoned that the automatic stay provision does not mandate a rule of decision without a change in the underlying law, but simply stays prospective relief until the court determines whether that relief complies with the new standard set forth in the immediate termination provision. *Id.* at 30a-31a. The dissenters asserted that the panel's decision threatens the constitutionality of numerous federal statutes, including the automatic stay in bankruptcy, 11 U.S.C. 362(a)(2), and the Speedy Trial Act of 1974, 18 U.S.C. 3161, 3162(a)(2). App., *infra*, 31a- 35a.

The State has filed a petition for a writ of certiorari to review the court of appeals' judgment. *Duckworth* v. *French*, No. 99-224. The State does not challenge the court of appeals' construction of the automatic stay provision. Its petition presents the question whether the automatic stay provision as construed by the court of appeals "violates separation-of-powers principles by legislatively specifying a rule of decision or legislatively annulling a judgment." Pet. i.



## REASONS FOR GRANTING THE PETITION

The court of appeals has held that the automatic stay provision of the PLRA violates constitutional separation-of-powers principles. That holding invalidates a provision of a recent Act of Congress. The court's constitutional ruling is premised on the court's interpretation of the automatic stay provision as not permitting a district court to suspend the automatic stay based on traditional equitable standards. That interpretation of the automatic stay provision conflicts with the decision of the Sixth Circuit in *Hadix* v. *Johnson*, 144 F.3d 925 (1998), and of the Fifth Circuit in *Ruiz* v. *Johnson*, 178 F.3d 385 (1999). Both circuits have held that a court has inherent authority to suspend the automatic stay based on traditional equitable standards and have upheld the constitutionality of the automatic stay provision on that basis.

The court of appeals' construction of the automatic stay provision is incorrect. The automatic stay provision does not deprive a court of authority to suspend the automatic stay under traditional equitable standards. Thus, when a party opposing an immediate termination motion can establish that a stay of the court's outstanding decree will cause irreparable injury and that the immediate termination motion is likely to be defeated on the merits, a court has discretion to suspend the automatic stay. When the automatic stay provision is so construed, it avoids the serious constitutional question that would be presented if the provision were interpreted as not permitting a district court to suspend the automatic stay when justified under traditional equitable standards. Review of the court of appeals' decision is therefore warranted.

1. The court of appeals in this case held that the automatic stay provision in the PLRA violates constitutional separation-of-powers principles. The court specifically stated that the automatic stay provision "represents an unconstitutional legislative encroachment into the powers reserved to the judiciary." App., *infra*, 18a; see also *id.* at 19a (automatic stay "amounts to an unconstitutional intrusion on the power of the courts to adjudicate cases"); *id.* at 20a (automatic stay "exceeds the power of the legislative branch"). That invalidation of a provision of a recent Act of Congress warrants this Court's review. See *United States* v. *Gainey*, 380 U.S. 63, 65 (1965) (certiorari granted "to review the exercise of the grave power of annulling an Act of Congress").

2. The premise of the court of appeals' constitutional ruling is that the automatic stay provision does not permit a court to suspend the automatic stay in accordance with traditional equitable standards. In the court of appeals' view, the automatic stay provision "is a self-executing legislative determination that a specific decree of a federal court * * * must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place." App., *infra*, 19a.

That interpretation of the automatic stay provision conflicts with the Sixth Circuit's decision in *Hadix* and the Fifth Circuit's decision in *Ruiz*. In *Hadix*, the Sixth Circuit held that "courts retain the power to suspend the automatic stay in accordance with general equitable standards," 144 F.3d at 937. Specifically, the court held that a court may suspend the automatic stay when "the traditional standard governing the issuance of a preliminary injunction in equity" is satisfied. *Id.* at 945. Similarly, in *Ruiz*, the Fifth Circuit held that, "[u]nder our reading of § 3626(e), the district court * * * retains its authority to suspend the (e)(2) stay." 178 F.3d at 395.



The court of appeals in this case acknowledged that its interpretation of the automatic stay provision conflicted with the interpretation adopted by the Sixth Circuit in *Hadix*. App., *infra*, 12a ("Although we have the highest regard for our Sixth Circuit colleagues and the concerns that motivated them to adopt the Justice Department's view of (e)(2), we cannot agree that the language of that subpart can be pushed this far."). In *Ruiz*, the Fifth Circuit also noted the conflict, observing that the Sixth Circuit in *Hadix* and the court below had "reached opposite results with respect to statutory interpretation." 178 F.3d at 393. The Fifth Circuit then adopted the Sixth Circuit's interpretation and rejected the interpretation adopted by the court below. *Id.* at 394-395. There is therefore a clear conflict in the circuits on the question whether the automatic stay provision permits a court to suspend the automatic stay in accordance with traditional equitable standards.

The conflict between the decision below and the decisions in *Hadix* and *Ruiz* is not only one of statutory construction. The difference between the circuits on the question whether a court may suspend the automatic stay in accordance with traditional equitable standards led the circuits to reach different conclusions about the constitutionality of the automatic stay provision. While the court below invalidated the automatic stay provision, the Fifth and Sixth Circuits upheld its constitutionality. *Ruiz*, 178 F.3d at 395 ("Under our reading," the automatic stay provision "is therefore constitutional"); *Hadix*, 144 F.3d at 937 ("Given [our] construction, the amended automatic stay provision is constitutional."). The consequence is that the automatic

stay provision is fully effective in the Fifth and Sixth Circuits, but wholly ineffective in the Seventh Circuit. Thus, in the Fifth and Sixth Circuits, if the district court does not postpone the automatic stay for good cause within 30 days of the filing of a motion for termination, or suspend the automatic stay in accordance with traditional equitable standards within 90 days of the filing of the motion, the automatic stay will take effect. In contrast, in the Seventh Circuit, the automatic stay can never take effect. That conflict in the circuits warrants resolution by this Court.

3. The court of appeals' interpretation of the automatic stay provision is incorrect. Federal district courts have always enjoyed inherent authority to issue interim equitable relief to preserve the status quo until a case that is pending before them is resolved. 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2943, at 79 (1995). To obtain such relief, a person must ordinarily demonstrate that a change in the status quo would cause him irreparable injury and that he is likely to succeed on the merits of the litigation. See *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). In deciding whether to grant such relief, the court also weighs the harm to others and the public interest. *Ibid*; *Yakus* v. *United States*, 321 U.S. 414, 440 (1944). The court of appeals interpreted the automatic stay provision to completely strip a federal court of its inherent authority to issue such interim relief. Thus, under the court of appeals' interpretation, even when the party opposing the immediate termination motion can show that a stay of the relief in the decree would cause him irreparable injury and that he is likely to defeat the immediate termination motion, the court would have no authority to suspend the automatic stay.



This Court has held, however, that, "[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction," *Califano* v. *Yamasaki*, 442 U.S. 682, 705 (1979), and that "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398 (1946); see also *Hecht Co.* v. *Bowles*, 321 U.S. 321, 330 (1944) (when "Congress desire[s] to make * * * an abrupt departure from traditional equity practice," it makes "its desire plain"). Those holdings are controlling here. The automatic stay provision does not clearly foreclose a court from preserving the status quo by suspending the automatic stay in accordance with traditional equitable standards. Instead, when read in conjunction with other related provisions of the Act, the automatic stay provision is most naturally read as permitting the exercise of that authority. The court of appeals therefore erred in failing to interpret the automatic stay provision to permit a court to suspend the automatic stay when justified under traditional equitable standards.

a. The automatic stay provision states that the filing of a motion for immediate termination "shall operate as a stay during the period—* * * beginning on the 30th day after such motion is filed * * * and * * * ending on the date the court enters a final order ruling on the motion." 18 U.S.C. 3626(e)(2) (Supp. III 1997). Particularly when read against the background principle that federal courts retain their inherent equitable authority absent the clearest command to the contrary, the text of the automatic stay provision does not deprive a court of authority to suspend the automatic stay when justi-

fied by traditional equitable standards. Instead, it simply describes how the statute is to operate in the absence of judicial intervention.

The court of appeals concluded that, because the language of the automatic stay provision states that the automatic stay "shall" take effect, and specifies when the stay begins and ends, it necessarily precludes an exercise of traditional equitable authority. App., *infra*, 12a. Those features of the statute, however, are perfectly consistent with the view that the statute establishes what will happen in the absence of judicial intervention; they do not demonstrate that Congress intended to take the extraordinary step of eliminating a court's inherent authority to preserve the status quo under traditional equitable standards.

b. The structure of the Act further supports the conclusion that Congress did not intend to strip a federal court of its inherent authority to issue interim relief when justified under traditional equitable standards. The very next provision of the Act (the postponement provision) specifies that "[t]he court may postpone the effective date of an automatic stay * * * for not more than 60 days for good cause," which does not include "general congestion of the court's calendar." 18 U.S.C. 3626(e)(3) (Supp. III 1997). If Congress had intended for the automatic stay provision to block judicial intervention, and not just to establish the regime that would exist in the absence of judicial intervention, the postponement provision would likely have been introduced by a phrase such as "notwithstanding Section 3626(e)(2)." The absence of such introductory language confirms that the automatic stay provision only addresses what will occur in the absence of judicial intervention and that it does not affect judicial authority to



suspend the automatic stay in accordance with traditional equitable standards.

The postponement provision does directly affect judicial authority. It not only authorizes a court to postpone the effective date of the automatic stay for 60 days for good cause; it necessarily implies that a court may not postpone the automatic stay under a good cause standard for more than 60 days. The absence of judicial authority to *postpone* the automatic stay under a *statutory good cause standard*, however, does not imply that a court lacks authority to *suspend* the automatic stay under *traditional equitable standards*.

The reason is that, under the statutory good cause standard, any legitimate reason for postponing a hearing on the immediate termination motion, other than general docket congestion, could justify a postponement of up to 60 days. 18 U.S.C. 3626(e)(3) (Supp. III 1997). Thus, a counsel's scheduling conflict, the unavailability of a witness, a general need for discovery, or a court's involvement in another pressing matter could all serve as a basis for a statutory postponement order. In contrast, in order to obtain a suspension of the automatic stay under traditional equitable standards, a party would ordinarily have to demonstrate that a stay of the court's orders would cause him irreparable injury and that he is likely to defeat the immediate termination motion. *Doran*, 422 U.S. at 931. Congress's unwillingness to permit a postponement of the automatic stay under a generous good cause standard for more than 60 days plainly does not imply that Congress has foreclosed a court from suspending the automatic stay when justified under the far more demanding standards for obtaining interim equitable relief. To the contrary, the fact that Congress has limited judicial authority in one

respect implies that the court remains free to exercise the traditional authority that has not been restricted.

c. It is also significant that Congress has provided a mechanism for appellate review of orders "staying, suspending, delaying, or barring the operation of the automatic stay" (other than an order postponing the automatic stay under the 60 day postponement provision). 18 U.S.C. 3626(e)(4) (Supp. III 1997). Such orders "shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28." *Ibid.* As the Sixth Circuit concluded in *Hadix*, 144 F.3d at 938, a provision for appellate review of orders suspending the automatic stay implies that district courts have authority to issue such orders. See also *Ruiz*, 178 F.3d at 394.

The court of appeals attempted to explain the provision for appellate review as a mechanism for ensuring prompt reversal of all orders suspending the automatic stay. 178 F.3d at 443. If that were Congress's intent, however, it would have provided for appellate correction through mandamus, which is the mechanism that has traditionally been used "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche* v. *Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943). Indeed, Congress manifested its awareness of the distinction in the statute at issue here. At the same time that Congress provided for *appeal* of an order suspending the automatic stay, it also provided for review by *mandamus* of a court's failure to perform its duty to issue a prompt ruling on a motion for termination. 18 U.S.C. 3626(e)(1) (Supp. III 1997). Thus, Congress manifested its recognition that an order suspending the automatic stay is within the authority of a



district court, and must be reviewed on appeal for conformity with traditional equitable standards.

d. Interpreting the automatic stay provision to permit a district court to suspend the automatic stay based on traditional equitable standards is further supported by the principle that a statute should be construed to avoid a serious constitutional question, when such a construction is fairly possible. *Jones* v. *United States*, 119 S. Ct. 1215, 1222 (1999); *United States* v. *X-Citement Video, Inc.*, 513 U.S. 64, 78 (1994). In *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995), the Court held that Congress lacks authority under the Constitution retroactively to command a federal court to reopen a final judgment for monetary relief. The Court explained that Article III "gives the Federal judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy." *Id.* at 218-219. In the course of the opinion, the Court also quoted Judge Iredell's statement in *Hayburn's Case*, 2 U.S. (2 Dall.) 409, 413 (1792), that "no decision of any court of the United States can, under any circumstances, * * * be liable to a revision, or even suspension, by the legislature itself, in whom no judicial power of any kind appears to be vested." 514 U.S. at 226.

If the automatic stay provision were interpreted as a "self-executing legislative determination that a specific decree of a federal court * * * must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place," (App., *infra*, 19a), a serious question would be raised concerning whether the automatic stay provision violates the separation-of-powers principles recognized in *Plaut*. In contrast, as the Fifth and Sixth Circuits have held, *Ruiz*, 178 F.3d at 395; *Hadix*, 144 F.3d at

937, and as the court of appeals in this case acknowledged, App., *infra*, 17a n.2, if the automatic stay provision is interpreted to permit a court to suspend the automatic stay in accordance with traditional equitable standards, no serious separation-of-powers question is presented. Since the automatic stay provision can fairly be interpreted to permit a court to suspend the automatic stay in accordance with traditional equitable standards, the court of appeals erred in failing to adopt that interpretation.[3]

---

[3] This case does not raise any question concerning the constitutionality of the immediate termination provision. As the courts of appeals have uniformly concluded, that provision falls comfortably within Congress's authority under *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855), to affect prospective relief through a change in the applicable law. See *Berwanger* v. *Cottey*, 178 F.3d 834 (7th Cir. 1999); *Nichols* v. *Hopper*, 173 F.3d 820 (11th Cir. 1999); *Benjamin* v. *Jacobson*, 172 F.3d 144 (2d Cir. 1999) (en banc), petition for cert. pending, No. 98-2042; *Imprisoned Citizens Union* v. *Ridge*, 169 F.3d 178 (3d Cir. 1999); *Hadix* v. *Johnson*, 133 F.3d 940 (6th Cir.), cert. denied, 118 S. Ct. 2368 (1998); *Inmates of Suffolk County Jail* v. *Rouse*, 129 F.3d 649 (1st Cir. 1997), cert. denied, 118 S. Ct. 2366 (1998); *Dougan* v. *Singletary*, 129 F.3d 1424 (11th Cir. 1997), cert. denied, 118 S. Ct. 2375 (1998); *Gavin* v. *Branstad*, 122 F.3d 1081 (8th Cir. 1997), cert. denied, 118 S. Ct. 2374 (1998); *Plyler* v. *Moore*, 100 F.3d 365 (4th Cir. 1996), cert. denied, 520 U.S. 1277 (1997).



## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

SETH P. WAXMAN
*Solicitor General*
BILL LANN LEE
*Acting Assistant Attorney General*
BARBARA D. UNDERWOOD
*Deputy Solicitor General*
IRVING L. GORNSTEIN
*Assistant to the Solicitor General*
MARK L. GROSS
MARIE K. MCELDERRY
*Attorneys*

OCTOBER 1999

**APPENDIX A**

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

---

No. 97-3075

RICHARD A. FRENCH, ET AL., PLAINTIFFS-APPELLEES

*v.*

JACK R. DUCKWORTH, ET AL., DEFENDANTS-APPELLANTS,
AND
UNITED STATES OF AMERICA, INTERVENOR-APPELLANT

---

**Appeal from the United States District Court**
**for the Southern District of Indiana**
**Indianapolis Division**
**No. IP 75-677-C-S. Hugh Dillin, *Judge***

---

[Argued April 6, 1998.
Decided May 6, 1999.*]

---

Before: FLAUM, ROVNER, and DIANE P. WOOD, *Circuit Judges.*

DIANE P. WOOD, Circuit Judge.

---

* This opinion is being issued in typescript. A printed copy will follow.

This case began almost three decades ago when inmates at what is now the Pendleton Correctional Facility in Indiana filed a class action against the state claiming that certain conditions at the prison violated their constitutional rights. They obtained some of the relief they sought in an injunction that was affirmed by this court in *French v. Owens*, 777 F.2d 1250, 1258 (7th Cir. 1985), and the prison has operated under that injunction, as modified from time to time, ever since. The present action arose when the State of Indiana decided to take advantage of the 1996 Prison Litigation Reform Act ("PLRA") and petition to terminate the injunction. The merits of that effort, however, are not before us at this time. Instead, we must decide whether the so-called "automatic stay" provision of the PLRA, codified at 18 U.S.C. § 3626(e)(2), applies, and if it does, whether it is constitutional.

## I

### A

In order to place this case in context, we begin with a brief description of the PLRA as it affects injunctions addressing prison conditions. The part of the statute with which we are concerned addresses the subject of "[a]ppropriate remedies with respect to prison conditions." 18 U.S.C. § 3626. Subpart (a)(1) provides that a federal court must limit prospective relief with respect to prison conditions in a variety of ways:

> The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.



18 U.S.C. § 3626(a)(1).

Recognizing that many institutions are already operating under existing injunctions, the statute also provides a way for the prison authorities to bring their federally imposed obligations into line with the limitations of § 3626(a)(1). Part (b) sets out a road map for the termination of prospective relief that has either outlived its usefulness, or that violates the (a)(1) conditions. Under the authority of § 3626(b)(1), prospective relief is terminable upon motion of any party or intervener within two years after the court granted the relief (or two years after the date of enactment of the PLRA), or one year after the court denied a request to terminate relief. Subpart (b)(2), which has come to be known as the "immediate termination" provision of the statute, establishes the defendant's or intervener's right to relief. Because this is the basis for the state's petition, we set it out in its entirety:

> (2) Immediate termination of prospective relief.—In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

18 U.S.C. § 3626(b)(2). Hard on the heels of this provision is another that sets forth an exception to the entitlement to "immediate" termination:

> (3) Limitation.—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

18 U.S.C. § 3626(b)(3). Part (c) of the PLRA addresses settlements, basically saying that a court may not enter a settlement in the form of a consent decree unless the settlement conforms to the statutory limitations, but that the parties are free to conclude any private settlement agreement they wish, as long as that agreement is not directly enforceable by the court (other than by reinstatement of the case). Part (d) makes clear that the PLRA's limitations do not apply to relief entered by a state court based solely upon claims arising under state law.

Finally (for our purposes) is the automatic stay provision, part (e). It begins innocuously enough in subpart (e)(1), by calling for the court to rule promptly on any motion to modify or terminate prospective relief. The problems arise with subpart (e)(2), which provides as follows:

> (2) Automatic stay.—Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period—



> (A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or
>
> (ii) beginning on the 180th day after such motion is filed in the case of a motion made under any other law; and
>
> (B) ending on the date the court enters a final order ruling on the motion.

* * * * *

18 U.S.C. § 3626(e)(2). Since 1997, it has been possible for the court to order a modest extension of time before the automatic stay goes into effect, if the court takes advantage of subpart (e)(3):

> (3) Postponement of automatic stay.—The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good cause. No postponement shall be permissible because of general congestion of the court's calendar.

18 U.S.C. § 3626(e)(3). See Pub. L. No. 105-119, § 123, 11 Stat. 2440, 2470 (1997) (adding this language). Finally, under subpart (e)(4) the statute expressly provides that an order "staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2)" other than the orders authorized by (e)(3) may be appealed pursuant to 28 U.S.C. § 1292(a)(1).

**B**

With that background in mind, we now turn to what happened in this case. On June 5, 1997, Warden Jack R.

Duckworth of the Pendleton Correctional Facility, along with Indiana officials Bruce Lemmon and Edward L. Conn (to whom we refer collectively as the state), filed a Motion To Terminate Decree, relying on § 3626(b)(1)(A) and (b)(2). In response, on June 30, 1997, the prisoner class ("the prisoners") filed a Motion for a Temporary Restraining Order or Preliminary Injunction, in which they asked the court to stay the automatic stay provision of § 3626(e)(2), which they described in paragraph 2 of their motion. They also filed a memorandum in support of the motion, in which they addressed the four standards that normally govern the issuance of a preliminary injunction: (a) likelihood of success on their argument that the automatic stay provision of § 3626(e)(2) would be found unconstitutional; (b) irreparable harm to the prisoners if the "automatic termination" took effect; (c) lack of harm to the defendants if the "automatic termination" was stayed; and (d) the public interest. The prisoners' memorandum concluded with a request that "the Court should enter a temporary restraining order or a preliminary injunction staying the operation of the automatic termination provision of the PLRA." On the same day, the prisoners also filed a separate Response to Defendants' Motion to Terminate Decree, in which they set forth their position that the termination provisions of §§ 3626(b)(2) and (b)(3) are unconstitutional.

On July 3, 1997, the district court granted the temporary restraining order the prisoners had requested and scheduled a hearing on July 10 for fuller consideration of the preliminary injunction motion. On July 11, following the hearing, the district court entered an



order converting the TRO into a preliminary injunction. The state has now appealed from that July 11 order.

Our review of the district court's actions is complicated by the fact that the court's orders granting the TRO and preliminary injunction can be read as confusing the § 3626(e)(2) automatic stay provision with the § 3626(b)(2) immediate termination provision. (This confusion seems to have originated with the parties themselves. We note that although the prisoners sought to stay the "automatic termination" provision, there is no such thing in the PLRA. There is one section providing for *immediate* termination, and another requiring an automatic *stay*.) Even though the prisoners had not asked for a TRO against the (b)(2) immediate termination provision, the July 3 order recites that it "enjoin[s] and prohibit[s] the automatic termination [sic] provision of the Prison Litigation Reform Act from taking effect." Further, the July 11 order explains that the court was converting the TRO into a preliminary injunction "for the principal reason that the Court believes that 18 U.S.C. § 3626(b)(2) is clearly unconstitutional as found by other courts." The July 11 order concludes that "[a]ccordingly, there shall be no stay of prospective relief in this matter."

Although we considered remanding this case to the district court to find out what it really meant, in the end we concluded that such a step was unnecessary. A review of the entire record (including the transcript of the July 10 hearing) convinces us that the district court intended to enjoin the (e)(2) automatic stay provision, not the (b)(2) immediate termination provision. True, the orders referred to the "automatic termination" provision and to 18 U.S.C. § 3626(b)(2). Several points

convince us, however, that the district court simply cited the wrong statutory section, a mistake to which we need not attach any significance unless it affects the substantial rights of the parties, see Fed. R. Civ. P. 61. First, the motion before the court and the arguments presented at the hearing on the preliminary injunction addressed only the automatic stay of (e)(2), not the immediate termination required by (b)(2). There was a fair amount of discussion of (b)(2) at the hearing, but this was in the context of the likelihood that the prisoners could defeat the state's underlying petition for immediate termination. Second, the record shows that proceedings have continued in the district court on the question whether the decree should be terminated pursuant to § 3626(b)(2), suggesting that the lower court is of the view that it did not finally resolve the termination issue. Finally, and most important, the last paragraph of the court's injunction sets forth in plain English what it was doing. Stripped of citations, the only thing that paragraph does is to refuse to permit a stay of prospective relief to go into effect. In substance, this means the injunction addresses the (e)(2) problem, not the (b)(2) problem.

Even though the question of the constitutionality of (b)(2) is not before this panel, it is presented in *Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999), which this court has also decided today. In *Berwanger*, we join the overwhelming majority of our sister circuits and hold that § 3626(b)(2) may be applied to existing consent decrees. See, *e.g.*, *Imprisoned Citizens Union v. Ridge*, 169 F.3d 178 (3d Cir. 1999); *Tyler v. Murphy*, 135 F.3d 594 (8th Cir. 1998); *Hadix v. Johnson*, 133 F.3d 940 (6th Cir. 1998); *Dougan v. Singletary*, 129 F.3d 1424 (11th Cir. 1997); *Inmates of Suffolk County Jail v.*



*Rouse*, 129 F.3d 649 (1st Cir. 1997); *Benjamin v. Jacobson*, 172 F.3d 144 (2d Cir. 1997) (*en banc*); *Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997); *Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996). *Cf. Taylor v. United States*, 143 F.3d 1178 (9th Cir. 1998) (finding § 3626(b)(2) unconstitutional), opinion withdrawn and en banc rehearing granted, 158 F.3d 1059 (9th Cir. 1998).

## II

That leaves the question whether the district court was empowered to enjoin the operation of § 3626(e)(2)'s automatic stay, and if it was not, whether that subsection is constitutional. Bearing in mind that we should try to avoid constitutional questions if we can, we address the question of statutory interpretation first.

The only other court of appeals to have considered the scope and constitutionality of (e)(2) is the Sixth Circuit, in its opinion in *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998). That court concluded that if (e)(2) were read to mean what it apparently says—that is, as a legislative command that a stay of prospective relief occurs as a matter of law no later than 90 days after the state's petition is filed, and that this legislative stay continues in effect until the findings required by (b)(3) have been made—then it would be "an unconstitutional incursion by Congress into the powers reserved for the Judiciary." *Id.* at 937. In order to avoid a finding of unconstitutionality, the court chose to adopt the position that the Justice Department had urged and concluded that the courts "retain the power to suspend the automatic stay in accordance with general equitable principles." *Id.* By that, the Sixth Circuit meant that the automatic stay of (e)(2) could itself be stayed by a

court using the traditional standards for issuing a preliminary injunction. *Id.* at 945.

While the decisions of the district courts do not create binding precedents (particularly not those within the Sixth Circuit, which are now bound by *Hadix*), it is nevertheless noteworthy that a number of judges have agreed with the Sixth Circuit that subpart (e)(2) is unconstitutional if it is a legislative stay, but they have not agreed that the statute can be saved by a narrowing interpretation. See *United States v. Michigan*, 989 F. Supp. 853 (W.D. Mich. 1996); *Glover v. Johnson*, 957 F. Supp. 110 (E.D. Mich. 1997); *Hadix v. Johnson*, 933 F. Supp. 1362 (W.D. Mich. 1996) (Enslen, C.J.); *Hadix v. Johnson*, 933 F. Supp. 1360 (E.D. Mich. 1996) (Feikens, J.). The question is one of first impression in this circuit, and we have benefitted from the careful consideration that our colleagues on the federal bench have devoted to it.

We are well aware of the rule requiring courts to construe statutes consistently with the Constitution, if the language will bear any such construction. *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575, 108 S. Ct. 1392, 99 L.Ed.2d 645 (1988), citing *Hooper v. California*, 155 U.S. 648, 657, 15 S. Ct. 207, 39 L.Ed. 297 (1895); *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 500, 99 S. Ct. 1313, 59 L.Ed.2d 533 (1979). But the qualification that the language must be able to bear the constitutional interpretation is an important one. Courts cannot redraft statutes so that they read the way Congress might have written them, or should have written them. Instead, we must taken the laws as they are given to us and work with them.



As was the case before the Sixth Circuit, three different views of (e)(2) have been urged on us: the prisoners argue that it is unconstitutional on several grounds; the state defends its constitutionality as a mere regulation of procedure; and the United States is of the view that (e)(2) would be an unconstitutional violation of either the separation of powers doctrine or the prohibition against legislative suspension of a particular judgment if (e)(2) really required automatic stays. The United States argues, however, that the automatic stay provision should be read to instruct a court reviewing prospective relief that the court should—but is not required to—stay the relief, an interpretation that avoids the constitutional flaws.

Before we delve too far into these points, we must decide which reading of subpart (e)(2) is correct: that of the prisoners and the state, on the one hand, or that of the United States, on the other. If we agree with the Sixth Circuit that the (e)(2) stay is discretionary in the final analysis, then there would be no need to explore the constitutional issues further. The statute would be reduced to something that placed the burden of moving for a stay or preliminary injunction on the prisoners rather than the state, but once the issue was before the court the normal equitable considerations would determine whether existing decree provisions remained in place pending a decision on a termination petition, or if they should be modified.[1] Subpart (e)(4) of the statute

[1] Most of the statutes cited by the dissent operate in precisely this fashion. See *post* at 451-53. Thus, for example, a party who wishes to be exempted from the automatic stay in bankruptcy need only petition the bankruptcy court for relief, and that court can lift the stay. Similarly, the Speedy Trial Act contains numerous safeguards that allow a district court to modify the time limits when

would in addition make it clear that appellate review under 28 U.S.C. § 1292(a)(1) was available no matter what the court called its order "staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2). . . ."

Although we have the highest regard for our Sixth Circuit colleagues and the concerns that motivated them to adopt the Justice Department's view of (e)(2), we cannot agree that the language of that subpart can be pushed this far. First, Congress used unequivocal words when it drafted (e)(2). A motion to modify or terminate prospective relief made under part (b) *shall* operate as a stay. Congress specified that the stay would be *automatic*. Finally, it specified not only a clear starting point, but also the ending point for the stay. Even though we do not lightly assume that Congress meant to restrict the equitable powers of the federal courts, we find it impossible to read this language as doing anything less than that.

Recognizing that it was hard to find internal support for its reading within (e)(2) alone, the Sixth Circuit relied in part on the fact that (e)(4) makes orders staying or otherwise barring the automatic stay automatically appealable. *Hadix*, 144 F.3d at 936. Why would Congress have included this in the statute, they reasoned, if it did not anticipate that courts would continue

---

good cause exists to do so. If these statutes offer good analogies to § 3626(e)(2), then logically the dissent should agree with the position of the Sixth Circuit: the automatic stay of (e)(2) goes into effect, but the district court is free to annul the stay on traditional equitable grounds. As the Sixth Circuit held, under that reading there plainly would be no constitutional flaw in the structure of the system.



to have the power to issue equitable relief against the stay? In our view, there is an answer to that question. The drafters of the PLRA realized that they were skating close to the line in (e)(2), and they wanted to ensure that the issue that is now before us could be resolved in an interlocutory appeal. The fact that a district court's effort to stay the (e)(2) stay can be appealed says nothing about what an appellate court must do once it has the case. Congress undoubtedly hoped that the appellate courts would reject these district court efforts and enforce the regime that (e)(2) sets up. That, however, is possible only if (e)(2) as we believe it must be read is constitutional, and so we now turn to that question.

The state (which as we said agrees with our reading of the statute) has defended (e)(2) as nothing more than the establishment of a procedure that assures prompt review of prospective injunctive relief in prison litigation. All the prisoners need do, the state asserts, is to come forward with evidence before the 30th day (or the 90th day, if the court grants an extension of time) showing that conditions at the prison require continuation of some or all of the prospective injunctive relief. In other words, the prisoners must make a complete showing on the merits of the termination petition, the state must complete its rebuttal of that showing, and the court must make its ruling, all within the 90-day period. The state analogizes (e)(2) to the 10-day limit on TROs found in Fed. R. Civ. P. 65(b), to the five-day limit on TROs under the Norris-LaGuardia Act, 29 U.S.C. § 107, and to the automatic stay in bankruptcy cases, 11 U.S.C. § 362.

There are important differences, however, between the automatic stay of (e)(2) and the statutes on which the state relies. Both the 10-day limit on TROs found in Rule 65(b) and the analogous limit in the Norris-LaGuardia Act respond to the particular problems of *ex parte* proceedings. Nothing in those laws purports to restrict the power of the district court to enter a preliminary injunction that preserves the status quo beyond the period of time allowed. The automatic stay in bankruptcy also does not help the state's case—indeed, if anything it undermines it. This is because the automatic stay of § 362, which is triggered by the filing of a petition in bankruptcy, see 11 U.S.C. § 362(a), has the effect of preserving the court's equitable powers over the entirety of the bankruptcy estate, not superseding or undermining them. In essence, it freezes everything external to the bankruptcy proceeding, including private transactions and state court litigation, and it has the effect of requiring other federal court proceedings to take a back seat to the federal bankruptcy court. Furthermore, litigants routinely petition the bankruptcy court to modify the stay, and there is no hint that Congress did not want the court to exercise that power (as there is with the PLRA). Allocations of power within the federal court system are a common feature of procedural legislation, and principles of federal supremacy account for the effect that the automatic stay has on state court proceedings.

The automatic stay of (e)(2), in contrast, operates directly on the internal adjudication of a case in federal court. It strips from the court the authority to decide whether the status quo (defined by the earlier decree the court entered that required prospective relief) should be continued or modified pending the court's



decision on the immediate termination petition. It does so in a way that leaves the power to continue the decree entirely in the hands of the party that files the motion for termination. This is so because the automatic stay must take effect no later than the 90th day after the petition is filed unless the court has issued a final order on the termination motion. Yet the state need only drag its feet or confront genuine difficulty in responding to requests for information that is relevant to the question whether the decree continues to be necessary, as defined by (b)(2) and (b)(3), in order to win its stay. Given the complexity of much prison litigation, we would be reluctant to try to address the problem of delay through satellite litigation over whether the state was "really" acting in bad faith or not, and imposing adverse fact-findings on a state that was trying to manipulate the process so that it won an automatic stay. We are also concerned that such an approach would once again read too much into the statute. Section 3626 constrains the authority of the district courts to impose and sustain prospective relief. It says nothing about conscripting states into this process, and we see nothing in the overall tenor of § 3626 that would justify superimposing on it a rule that a state risks the denial of its motion for termination on the merits if it does not (or cannot) comply with the (e)(2) time limits.

We do not suggest that Congress cannot prescribe rules of practice and procedure for the federal courts, and, contrary to the dissent's dire predictions, nothing in this opinion in any way threatens the ordinary time limits that pervade both federal procedural rules and statutes. First, it is plain that Congress has the power to prescribe procedural rules. See *Hanna v. Plumer*, 380 U.S. 460, 472, 85 S. Ct. 1136, 14 L.Ed.2d 8 (1965);

*Sibbach v. Wilson & Co.*, 312 U.S. 1, 9, 61 S. Ct. 422, 85 L.Ed. 479 (1941). Many time limits are subject to adjustment, and thus are irrelevant for present purposes. Some both define the jurisdiction of a court and establish when a judgment is final, such as the time for filing an appeal from a final judgment, Fed. R. App. P. 4(a), (b), or the time within which a motion to correct a sentence must be filed, Fed. R. Crim. P. 35(c). But that is not what (e)(2) does, and it is important to appreciate just how unusual a provision it is. As the Sixth Circuit also recognized, temporal strictures upon substantive judicial decision making are scarce. *Hadix*, 144 F.3d at 943-44 n.15. Where such rules and statutes tie a judicial outcome to a time restriction, the court usually retains discretion to override the restriction for good cause. *Id.* For example, the Speedy Trial Act sets forth time limits for criminal trials, including a requirement that if the Act's deadlines are violated, the charges must be dismissed. See 18 U.S.C. § 3161; see also *United States v. Brainer*, 691 F.2d 691, 695-99 (4th Cir. 1982) (upholding the Speedy Trial Act against a challenge that the Act violates the doctrine of separation of powers). Unlike § 3626(e)(2), however, the Act contains a long list of exceptions, see 18 U.S.C. § 3161(h), including a broad provision that authorizes judges to exclude from the time calculations "any period of delay" upon "finding[ ] that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(8)(A). See also Fed. R. Civ. P. 60(b) (authorizing courts "upon such terms as are just" to relieve a party from a final judgment, including a judgment for prospective relief).

Similarly, the Antiterrorism and Effective Death Penalty Act ("AEDPA") states that "[t]he Court of



Appeals *shall* grant or deny the authorization to file a second or successive application [for a writ of habeas corpus] *not later than* 30 days after the filing of the motion." 28 U.S.C. § 2244(b)(3)(D). For many of the same reasons that animate us today, however, the courts of appeals have ruled that this time limit may be modified if the court finds it necessary. See, *e.g.*, *In re Siggers*, 132 F.3d 333, 336 (6th Cir. 1997) (reading the language of § 2244(b)(3) as "hortatory or advisory rather than mandatory," in order to avoid constitutional difficulties); *Galtieri v. United States*, 128 F.3d 33, 36-37 (2d Cir. 1997) (ruling that § 2244(b)(3) must be applied "flexibly," and concluding that the courts should not forego "reasoned adjudication" in the small number of cases that cannot be resolved within 30 days): *In re Vial*, 115 F.3d 1192, 1194 n.3 (4th Cir. 1997) (noting that the court exceeded the 30-day limit but concluding that the importance of the issue justified the delay). As we noted earlier, this is precisely the kind of flexibility that we believe is foreclosed to the courts under the language of § 3626(e)(2).[2]

The fact that Congress can impose time limits on executive agencies is of little assistance here. Unlike temporal limitations on judicial decision making, such constraints on agency action are prevalent throughout administrative law. See, *e.g.*, 7 U.S.C. § 2a(iv)(II) (setting a 30-day time limit for Security and Exchange Commission's review of a board of trade's application for designation as a contract market). Where agencies

---

[2] At least one of the other examples cited by the dissent has been construed the same way, namely, the statute governing appeals by persons incarcerated for contempt of a grand jury, 28 U.S.C. § 1826(b), see *In the Matter of a Witness Before the Special October 1981 Grand Jury*, 722 F.2d 349, 353 (7th Cir. 1983).

are involved, the judgments subject to legislative encroachment were not rendered by Article III courts but by entities that the Constitution places under the control of Congress. The distinction between those two situations motivated the Court's ruling in *Paramino Lumber Co. v. Marshall*, 309 U.S. 370, 60 S. Ct. 600, 84 L.Ed. 814 (1940), cited with approval in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 232, 115 S. Ct. 1447, 131 L.Ed.2d 328 (1995), where it upheld a private bill that reopened an administrative order, noting that the order was not an adjudication and therefore the legislative act did not constitute "an excursion of Congress into the judicial function" or "affect[] judicial judgments." 309 U.S. at 381 & n. 15, 60 S. Ct. 600. Last, we think there is an important difference between legislation that affects prospective relief, and legislation that prevents the court from preserving the status quo in whole or in part during the pendency of a suit. The former is permissible, as *Plaut* observed, but the latter touches upon the heart of the adjudicative process and as such is reserved for the Judicial Branch of government—a point on which we now elaborate.

The prisoners have urged that (e)(2) violates Article III and the separation of powers principle, as well as the due process clause, and thus that it must be declared unconstitutional. Such a finding would not have any effect on the remainder of the PLRA, because Congress included an express severability clause in the statute. See Pub. L. No. 104-134, Title I, § 101(a), Apr. 26, 1996, 110 Stat. 1321-77, renumbered Title I, Pub.L. No. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327. We conclude, as did our colleagues in the Sixth Circuit when they analyzed the statute according to the reading we have adopted, that (e)(2) violates the separation of



powers principle because it is a direct legislative suspension of a court order. See *Hadix*, 144 F.3d at 939. Because we believe that (e)(2) represents an unconstitutional legislative encroachment into the powers reserved to the judiciary, we do not need to reach the prisoners' due process arguments.

Under the Supreme Court's decision in *Plaut*, we know that Congress cannot vest review of the decisions of Article III courts in officials of the executive branch. See 514 U.S. at 218, 115 S. Ct. 1447, citing *Hayburn's Case*, 2 U.S. (2 Dall.) 408, 1 L.Ed. 436 (1792), and *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 68 S. Ct. 431, 92 L.Ed. 568 (1948). The Sixth Circuit found, and we agree, that there is no principle under which the legislative branch should enjoy a privilege of reviewing particular decisions of Article III courts that the executive branch does not have. See *Hadix*, 144 F.3d at 940. As the Supreme Court explained in *Plaut*, "the Framers crafted [Article III] . . . with an expressed understanding that it gives the Federal Judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy." 514 U.S. at 218-19, 115 S. Ct. 1447. Yet (e)(2) places the power to review judicial decisions outside of the judiciary: it is a self-executing legislative determination that a specific decree of a federal court—here the decree addressing conditions at Pendleton— must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place. This amounts to an unconstitutional intrusion on the power of the courts to adjudicate cases.

Unlike the Sixth Circuit, we also find that (e)(2) violates the principle articulated in *United States v. Klein*, 80 U.S. (13 Wall.) 128, 20 L.Ed. 519 (1871). In *Klein*, Congress passed a statute providing that individuals whose property was seized during the Civil War could recover the property by showing that they had not offered "aid or comfort" to the enemy during the war. *Klein*, 80 U.S. at 131. The Supreme Court subsequently held that a presidential pardon was a sufficient showing that an individual was not a Confederate sympathizer. Reacting to this decision, Congress adopted legislation that required the court to consider a presidential pardon as conclusive evidence of the person's disloyalty to the United States and to dismiss appeals in cases seeking to recover the property of such persons. The *Klein* Court struck down this law, holding that Congress does not have the power to impose a rule of decision for pending judicial cases, apart from its power to change the underlying applicable law.

Applying *Klein* to 18 U.S.C. § 3626(e)(2), the Sixth Circuit focused on the broader remedial provisions of the PLRA and found that the automatic stay did not mandate a rule of decision. *Hadix*, 144 F.3d at 940. The PLRA simply confined the relief that may be ordered in a prison conditions case to measures strictly designed to address violations of federal law. *Id.* But, as we have been emphasizing, (e)(2) does not directly implicate the final decision on the merits of the (b)(2) termination motion. Instead, it addresses what should happen during the pendency of the case. For that time period, the statute does mandate a particular rule of decision: the prospective relief must be terminated. In our view, this falls comfortably within the rule of *Klein*, and as such, it exceeds the power of the legislative branch.



Our determination that the automatic stay provision is not enforceable does not mean that courts should not try to conform their conduct to it. Indeed, the contrary is true: we hold that the district courts must conform their actions to the time limits in § 3626(e)(2) unless compelling reasons for setting them aside can be articulated. On an interlocutory appeal under § 3626(e)(4), this court has the power to require either prompt action or a stay of prospective relief by finding that a recalcitrant judge has abused her discretion. In passing the PLRA, Congress sought to quell the perceived tendency of federal courts to micro-manage state prisons by limiting the availability of consent decrees and other judicially-imposed prospective relief. See H.R. Rep. No. 21, 104th Cong., 1st Sess. 9 (1995) (noting that federal courts have "used these consent decrees to intrude into a state criminal justice system and seriously undermine the ability of the local justice system to dispense any true justice"). The PLRA accomplishes this goal, in part, by "includ[ing] provisions that will guard against court-ordered [remedies] dragging on and on, with nothing but the whims of federal judges sustaining them." H.R. Rep. No. 21, at 8.

It may be, however, that in some cases the courts will not be able to carry out their adjudicative function in a responsible way within the time limits imposed by (e)(2). See *Hadix*, 144 F.3d at 944. Given the command of the PLRA to tailor relief to the least restrictive alternative, and to take every step to ensure that an injunction does not stray beyond the requirements of federal law, the district courts will have a complex task on their hands. Some decrees under review will have been the result of years of litigation, and in considering whether termination is proper under § 3626(b)(2), or

whether newly tailored relief should continue under § 3626(b)(3), the court may need not only to review a massive record, but also to take new evidence. In many other cases, like this one, the decree will be the result of a settlement between the parties and the record may be far too scant to make the required determinations. See generally *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378, 112 S. Ct. 748, 116 L.Ed.2d 867 (1992) (holding that a Fed. R. Civ. P. 60(b) motion may be used to seek modification of a consent decree). The court will have the obligation to supplement the record so that its final orders comply with the statute, and both sides will have the right to present argument on this point. Even though Congress has the power to regulate the jurisdiction of the inferior federal courts, *Keene Corp. v. United States*, 508 U.S. 200, 207, 113 S. Ct. 2035, 124 L.Ed.2d 118 (1993), citing *Finley v. United States*, 490 U.S. 545, 548, 109 S. Ct. 2003, 104 L.Ed.2d 593 (1989), under *Klein* it cannot take away the power of the court in a particular case to preserve the status quo while it ponders these weighty questions.

This conclusion makes it unnecessary for us to reach the alternate constitutional grounds on which the prisoners have relied. We emphasize again that our ruling is a narrow one. It does not prevent the state from asking that the prospective relief be stayed while an immediate termination motion is pending. Furthermore, in *Berwanger* this court has upheld the constitutionality of the heart of this part of the PLRA, which is the (b)(2) right to immediate termination. Here, we hold only that 18 U.S.C. § 3626(e)(2) is unconstitutional insofar as it is a legislatively commanded, self-executing stay of an existing court order that requires remedies in a prison conditions case. The district judge did not



abuse his discretion at the time he issued his order refusing to stay prospective relief in this case, while he considered the state's petition for immediate termination of the decree governing the Pendleton Correctional Facility.[3] On the understanding that the PLRA requires the district court to take every possible measure to expedite its final ruling on the state's motion, and if need be to reconsider the propriety of an interim stay, the order of the district court is AFFIRMED.

EASTERBROOK, *Circuit Judge*, with whom POSNER, *Chief judge*, and MANION, *Circuit Judge*, join, dissenting from the denial of re hearing en banc. The panel holds an Act of Congress unconstitutional—and not some musty statute overtaken by a change of constitutional doctrine, but the flywheel of recent legislation. Moreover, the panel's approach is not supported by either the text of the Constitution or any doctrine developed by the Supreme Court, and if the panel is right then many other important statutes and rules are unconstitutional. I agree with the panel that § 3626(e)(2) cannot bear the reading given it by *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998). Congress set a deadline; *Hadix* turns it into mush. The creation of a conflict is justified. But we should not then use con-

---

[3] Although the Sixth Circuit and this panel have arrived at the same ultimate conclusion—namely, that the district courts retain the power notwithstanding § 3626(e)(2) either to stay prospective relief pending adjudication of a § 3626(b)(2) motion or to refuse a stay—the reasoning underlying our respective decisions is sufficiently at odds that we have circulated this opinion to the full court under Circuit Rule 40(e). A majority of the judges in regular active service did not wish to hear this case *en banc*. Chief Judge Posner and Circuit Judges Easterbrook and Manion voted to rehear *en banc*.

stitutional grounds to knock § 3626(e)(2) out of commission. Judge Norris's separate opinion in *Hadix*, 144 F.3d at 950-52, rightly concludes that this statute is within Congress' power.

The Prison Litigation Reform Act substantially changes the criteria that permit a federal court to take over the management of a prison. Congress directed courts to apply the new criteria to existing decrees as well as to future ones. That change properly may be applied to ongoing relief. So we hold today in *Berwanger v. Cottey*, following the lead of many other courts. See *Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997); *Benjamin v. Jacobson*, 172 F.3d 144 (2d Cir. 1999) (en banc); *Imprisoned Citizens Union v. Ridge*, 169 F.3d 178 (3d Cir. 1999); *Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996); *Hadix v. Johnson*, 133 F.3d 940 (6th Cir. 1998); *Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997); *Dougan v. Singletary*, 129 F.3d 1424 (11th Cir. 1997). The only contrary appellate decision, *Taylor v. United States*, 143 F.3d 1178 (9th Cir. 1998), has been withdrawn on the grant of rehearing en banc, 158 F.3d 1059 (9th Cir. 1998).

Many judges are reluctant to undo their own handiwork and may share the view of the district judge in *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 433, 96 S. Ct. 2697, 49 L.Ed.2d 599 (1976), that relief should continue for the judge's lifetime. Congress therefore designed a mechanism to ensure the application of the new rules to the stock of existing decrees—and to facilitate reexamination even of post-PLRA orders, so that state and local governments may regain control of their institutions once an injunction has achieved its purpose of correcting violations of federal



law. See, e.g., *Missouri v. Jenkins*, 515 U.S. 70, 102, 115 S. Ct. 2038, 132 L.Ed.2d 63 (1995); *People Who Care v. Rockford Board of Education*, 171 F.3d 1083, 1090-91 (7th Cir. 1999).

Once a year has passed since the last time the judge addressed the subject (or two years since the decree's entry or the PLRA's enactment) any party may file a motion to terminate relief. 18 U.S.C. § 3626(b)(1). The decree then must be terminated, § 3626(b)(2), unless the judge determines "that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. § 3626(b)(3). Deadlines are essential lest these rules prove nugatory, so § 3626(e)(1) requires the court to decide "promptly", and § 3626(e)(2) quantifies "prompt" as within 30 days, with a possible extension to 90 under § 3626(e)(3). Subsection (e)(2) calls for a stay rather than termination of the decree. Like the automatic stay in bankruptcy law, 11 U.S.C. § 362, subsection (e)(2) does not cancel any judicial decision; it simply stays its effectiveness until the judge renders a decision on the merits. Subsection (e)(2) thus gives the judge a reason to rule promptly. Our case shows the need for such an incentive. Having declared subsection (e)(2) to be unconstitutional, the district judge proceeded to ignore subsection (e)(1). Defendants sought termination of the decree by a motion in June 1997. Almost two years have passed, but the district judge has yet to take a single step toward acting on this request—and the last word of the panel's opinion is "affirmed." A process

that is supposed to be rapid drags on with no end in sight.

According to the panel, subsection (e)(2) is unconstitutional because it "operates directly on the internal adjudication of a case in federal court." Maj. op. 444. This is not an accurate description of the statute. Although subsection (e)(1) tells courts how to behave ("promptly rule"), subsection (e)(2) does not. Like the automatic stay in bankruptcy, this statute tells *the parties* whether they can take advantage of a judgment; it does not tell judges when, how, or what to do, but specifies what happens if the judge does not act. If 30 days pass without action, prospective relief is automatically stayed. The judge can devote his time to the criminal docket or whatever he deems more pressing than prison-reform litigation. But even if we understand § 3626(e)(2) as affecting the court's allocation of time (which it will do indirectly; that's its point), why is this a constitutional problem?

Article III establishes three safeguards of judicial independence: tenure of office, protection against financial penalties, and the rule (an implication of establishing a "judicial Power") that final judgments must be carried out. See *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 115 S. Ct. 1447, 131 L.Ed.2d 328 (1995). An automatic stay following 30 days of judicial inaction does not undermine any of these. The judge is 100% in charge. Stays do not conflict with tenure, salary protection, or respect for judgments. Bankruptcy practice shows this; often the principal reason for filing is to suspend the effectiveness of a judgment (such as a judgment of foreclosure and sale) pending further decision. Consider, too, Fed. R. Civ. P. 65(b),



which limits a temporary restraining order to 10 days (with a single extension to 20). Just as subsection (e)(2) causes an injunction to lapse unless the judge makes findings within 30 (or 90) days, so Rule 65(b) causes an injunction to lapse unless the judge makes findings within 10 (or 20) days. No one thinks that Rule 65(b) is an unconstitutional intrusion on the way judges manage their business; instead it protects defendants against unwarranted judicial interference. Just so with § 3626(e)(2): It ensures that state and local governments are not burdened by federal control of their institutions for longer than is necessary.

My colleagues on the panel treat Rule 65(b) as justified by the need to limit *ex parte* orders, and this is indeed good support for the rule—but support that is unrelated to Article III. It mixes up distinct issues to distinguish Rule 65(b) from § 3626(e)(2) by pointing to the rights of litigants. If Congress should provide that injunctions in prison litigation expire five minutes after the court receives a motion, this would indeed be unconstitutional, but not because of anything in Article III. The problem with my hypothetical statute would be the due process clause, which entitles litigants to a meaningful opportunity to be heard before a final decision. Section 3626(e)(2) is not problematic under the due process clause. A stay is not a final decision (it is more like a TRO, which may issue *ex parte*), and 30 days is adequate for the litigants to be heard (just as the 20-day window under Rule 65 affords time for a hearing). The panel's concern about defendants who drag their heels in an effort to prevent the judge from reaching a decision (maj. op. 444) has nothing to do with Article III and the court's internal operations, and everything to do with the due process rights of the

litigants. The possibility of foot-dragging under § 3626(e)(2) is less serious than under Rule 65(b), for a defendant's barricade of the plaintiff's access to information would be "good cause" to postpone the automatic stay until 90 days under subsection (e)(3), and this extra time makes the tactic less likely to succeed than when the defendant need stall for only 20 days. Courts can foil delaying maneuvers by imposing sanctions on parties that fail to cooperate in discovery, see Fed. R. Civ .P. 37, and by drawing adverse inferences about missing evidence. The inference then could support a finding under § 3626(b)(3). None of this, however, has anything to do with Article III or the separation of powers.

Someone who thinks that the PLRA is an intrusion on the powers of the judiciary should point not to § 3626(e)(2), which just goads judges to get a move on, but to § 3626(b)(2), which calls for the "immediate termination" of injunctive relief on motion of a party. Yet we hold in *Berwanger*—and the panel in *French* agrees, maj. op. 441—that subsection (b)(2) is constitutional, for Congress may require courts to revisit prospective relief when it changes generally applicable rules of law. See *Robertson v. Seattle Audubon Society*, 503 U.S. 429, 112 S. Ct. 1407, 118 L.Ed.2d 73 (1992); *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 112 S. Ct. 748, 116 L.Ed.2d 867 (1992); *System Federation No. 91 v. Wright*, 364 U.S. 642, 81 S. Ct. 368, 5 L.Ed.2d 349 (1961). The PLRA creates new substantive requirements, and the legislature may require all ongoing relief—whether based on pre-PLRA or post-PLRA decrees—to conform. If subsection (b)(2) is constitutional, then Congress must be entitled to require



its effective implementation, which is all subsection (e)(2) does.

Federal judges have no constitutional power to frustrate through delay the implementation of valid legislation. I am not aware of any decision by the Supreme Court holding, or even suggesting, that statutes requiring judges to adjudicate with dispatch pose constitutional problems. Many laws, of unquestioned validity, require the President and his subordinates to meet deadlines for action; the Judicial Branch has no more freedom from time pressure than does the Executive Branch. If the separation of powers protects judges from time limits, it protects the President too. The panel is unwilling to extend any such protection to the President; hundreds if not thousands of laws would be swept away. But as a matter of constitutional language and structure, the Judicial and Executive Branches are identically situated with respect to deadlines that affect the sequence in which they handle business.

If there is a constitutionally based right of independence in the administration of judicial business, it invalidates 28 U.S.C. §§ 144 and 455, which prescribe judicial conduct much more directly than does § 3626(e)(2). Until 1911, when § 144 was enacted, rules of disqualification were based on the common law. A formal Code of Conduct for United States Judges was first adopted in 1973. Not until 1974 was there any requirement that federal judges refrain from sitting when their impartiality might reasonably be questioned. 28 U.S.C. § 455(a). Thoroughgoing application of the panel's approach would annul these statutes and return all ethical standards to judicial hands. But if a

legislature has the constitutional authority to strip judges of the power to render decisions at all (and this is what § 144 and § 455 do), it has the authority to tell judges to devote priority attention to cases that the legislature deems vital. Statutes specifying procedures for adjudication have been with us since the beginning of the republic (see Act of Sept. 24, 1789, ch. 20, 1 Stat. 73, 83; Act of Sept. 29, 1789, ch. 21, 1 Stat. 93), something one cannot say about statutory ethics rules. But if the process of adjudication *really* is independent of legislative control, all procedural rules predating the Rules Enabling Act of 1936—and all statutes overriding rules promulgated by judges under that law—must be unconstitutional too.

Interference with judges' allocation of time is only one of the panel's objections to § 3626(e)(2). The other rests on *United States v. Klein*, 80 U.S. (13 Wall.) 128, 20 L.Ed. 519 (1871), which the panel reads as establishing the principle that "Congress does not have the power to impose a rule of decision for pending judicial cases, apart from its power to change the underlying applicable law." Maj. op. 446. Whether *Klein* stands for this proposition is an interesting question, see *Seattle Audubon Society*, 503 U.S. at 441, 112 S. Ct. 1407, but not one we need consider. Subsection (e)(2) does not establish *any* "rule of decision for pending judicial cases"; the rule of decision comes from § 3626(b)(3), a statute that assuredly makes a "change [in] the underlying applicable law." Many judgments governing prison conditions are based on the parties' consent, which may be unrelated to the requirements of federal law. See *Firefighters Local 93 v. City of Cleveland*, 478 U.S. 501, 522, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986): "it is the agreement of the parties, rather



than the force of the law upon which the complaint was originally based, that creates the obligations embodied in a consent decree." Some decrees depend on a mixture of state and federal obligations. But after § 3626(b)(3) prospective relief is limited strictly to enforcing the requirements of federal law, and the relief must be the minimum necessary to vindicate the federal right. That is a substantial change. All § 3626(e)(2) does is stay a decree's effectiveness until the court completes the task of applying the new rule of law. An automatic stay pending final decision no more violates the principle of *Klein* than does the automatic stay in bankruptcy law, or the automatic termination of a TRO under Rule 65(b). Section 3626(e)(2) requires courts to depart from the approach they take when revisiting other decrees, but "Congress may intervene and guide *or control* the exercise of the courts' discretion". *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313, 102 S. Ct. 1798, 72 L.Ed.2d 91 (1982) (emphasis added).

If § 3626(e)(2) is unconstitutional, then a long list of statutes is in jeopardy. I have mentioned a few—the automatic stay in bankruptcy, rules for judicial disqualification, Fed. R. Civ. P. 65(b)—but there are more. Here are some members of the endangered species.

1. The Bankruptcy Code provides for an automatic stay of all legal claims, including the enforcement of judgments, 11 U.S.C. § 362(a)(2), against the debtor. The stay lasts until a judge comes to a conclusion about the subject, just as with § 3626(e)(2). But while, under § 3626(e)(2), the judge has 30 or 90 days to act before the stay takes effect, under § 362 the judge has zero days. So if § 3626(e)(2) violates Article III by giving the judge too little time—and *Klein*, by staying a judg-

ment without an intervening change of substantive law—then § 362 is worse on both counts. (Section 362 also is like § 3626(e)(2) because it does not require the judge to act; it just deprives a litigant of a judgment's benefits until the judge does act.) One can't logically distinguish § 362 by saying that Congress has special powers over bankruptcy or that the automatic stay helps to coordinate the handling of claims. The bankruptcy power is no different from § 5 of the 14th Amendment, which undergirds § 3626. Legislative powers are pertinent to the question whether Congress may alter private rights; they are not pertinent to the question whether Article III contains a judicial immunity from time limits, or prevents judgments from being subject to stay. *Buckley v. Valeo*, 424 U.S. 1, 132-37, 96 S. Ct. 612, 46 L.Ed.2d 659 (1976), and its successors reject any argument that Congress' "special competence" over such- and-such a subject enables it to enact a law that violates the separation of powers. That a statute is a sensible way to deal with a problem does not save it against a separation-of-powers challenge. See *INS v. Chadha*, 462 U.S. 919, 944, 103 S. Ct. 2764, 77 L.Ed.2d 317 (1983); *Bowsher v. Synar*, 478 U.S. 714, 722, 736 106 S. Ct. 3181, 92 L.Ed.2d 583 (1986).

2. The Speedy Trial Act requires the court to try the defendant within 70 days or dismiss the indictment. 18 U.S.C. §§ 3161, 3162(a)(2). This statute, like § 3626(e)(2), does not require the court to act, but establishes the consequence of delay. Although courts can grant extensions of the 70-day period, this can't matter to the constitutional analysis. My colleagues' objection to § 3626(e)(2) is not that the time is too short—a claim that could not be reconciled with Rule 65(b)—but that it establishes a deadline. Any other



deadline would be equally offensive to the separation of powers. When the fourth circuit sustained the Speedy Trial Act against an attack based on Article III, it rejected the interpretation of *Klein* that our panel embraces. *United States v. Brainer*, 691 F.2d 691, 695-96 (4th Cir. 1982).

3. Appeals by persons incarcerated for contempt of a grand jury must be decided within 30 days. 28 U.S.C. § 1826(b). This statute operates directly on the judge rather than on the litigants.

4. The court of appeals must grant or deny, within 30 days, an application for leave to commence a second or successive collateral attack. 28 U.S.C. §§ 2244(b)(3)(D).

5. Chapter 154 of the Judicial Code (added by the AEDPA) sets multiple time limits in capital cases. 28 U.S.C. § 2266(b). These are binding rather than hortatory. Section 2266(b)(4)(B) says that a state may "enforce" these limits by mandamus, and that the court of appeals "shall act on the petition for a writ of mandamus not later than 30 days after the filing of the petition."

6. Pretrial detention following arrest can't exceed 10 days unless the court makes specified findings. 18 U.S.C. § 3142(d). This is almost completely parallel to § 3626(e)(2)—and it won't do to distinguish the two by saying that § 3142(d) protects the right of suspects to liberty. That would be irrelevant to the independence of the judiciary under Article III, the fulcrum of the panel's opinion, and is at all events no distinction: § 3626(e)(2) protects the rights of states to be free from unwarranted injunctions of indefinite duration.

7. The criminal rules contain many time limits: Rule 35(c) caps at 7 days the time to correct an error in a sentence (note that this is an outer limit for judicial *action*, not for a party to make a motion); Rule 29(c) gives a judge only 7 days to entertain (or extend the time to make) a motion for acquittal, and this time can't be further extended. *Carlisle v. United States*, 517 U.S. 416, 116 S. Ct. 1460, 134 L.Ed.2d 613 (1996). See also Rules 33 and 34—more time limits that apply to judges, not just counsel. Rule 45(b) forbids the enlargement of time specified by "Rules 29, 33, 34 and 35, except to the extent and under the conditions stated in them." The district judge in *Carlisle* treated the 7-day time limit for action in Rule 29(c) as advisory; the Supreme Court disagreed; but if our panel is right, then *Carlisle* is not only wrong but also unconstitutional, for if the judge fails to act within 7 days defendants may lose valuable rights (and in *Carlisle* did lose a valuable right—an acquittal!).

8. Former Fed. R. Crim. P. 35 set a limit of 120 days for *action* on motions to reduce sentence, and strict enforcement of this limit was endorsed by *United States v. Addonizio*, 442 U.S. 178, 99 S. Ct. 2235, 60 L.Ed.2d 805 (1979). In *United States v. Kimberlin*, 776 F.2d 1344 (7th Cir. 1985), and *Gaertner v. United States*, 763 F.2d 787 (7th Cir. 1985), we held that this time limit was "jurisdictional" and thus prevailed even when the prisoner's motion was timely and only the judge's delay deprived the defendant of an opportunity for a lower sentence. If the panel is right, then *Addonizio*, *Kimberlin*, and *Gaertner* are not only wrong but also unconstitutional.



9. After a defendant is found not guilty by reason of insanity, the judge must hold within 40 days a hearing to determine whether the person is still insane and therefore subject to continuing commitment. 18 U.S.C. § 4243(c).

10. Fed. R. Civ. P. 65(b) sets 10-and-20 day limits for temporary restraining orders. The Norris-LaGuardia Act, 29 U.S.C. § 107, has a 5-day limit. These time limits force the judiciary to hold hearings and make prompt decisions, else orders expire, in the same way as does § 3626(e)(2).

My colleagues' response is that these time limits either have escape hatches despite their absolute language—a response at war with the panel's conclusion that § 3626(e)(2) does *not* permit departure on equitable grounds, and with the Supreme Court's approach to time limits in *Carlisle* and *Addonizio*—or are unconstitutional themselves. Either way, the scope of the panel's decision is breathtaking. As a practical matter, all of these statutes are gutted. They go by the boards not because of either the Constitution's text or any controlling decision of the Supreme Court, but because the panel has invented a right of the judicial branch to freedom from deadlines. If this does not meet the standard for en banc review, I don't know what does.

**APPENDIX B**

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

---

No. IP 75-677-C

RICHARD A. FRENCH, ET AL., PLAINTIFFS

*v.*

JACK DUCKWORTH, ET AL., DEFENDANTS

---

[Filed: July 11, 1997]

---

**ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

On June 30, 1997, Plaintiffs filed their Motion for a Temporary Restraining Order or a Preliminary Injunction to Stay the Automatic Termination Provision of the Prison Litigation Reform Act. At 2:30 p.m., on July 3, 1997, the Court granted Plaintiffs a Temporary Restraining Order. On July 10, 1997, the Court held a hearing on Plaintiffs' request for preliminary injunction.

For the reasons stated in the Court's order of July 3, 1997, the Plaintiffs' motion and presentation at the hearing, and for the principal reason that the Court believes that 18 U.S.C. § 3626(b)(2) is clearly unconsti-



tutional as found by other courts, and for that reason that Plaintiffs are likely to succeed on the merits and Defendants would not be harmed by the entry of the preliminary injunction, the Temporary Restraining Order of July 3, 1997, is now converted to a preliminary injunction.

Accordingly, there shall be no stay of prospective relief in this matter and the parties shall continue to comply with this Court's prior orders and judgments until further order of the Court.

**So Ordered.**

/s/ S. HUGH DILLIN 7-11-97
S. HUGH DILLIN, Judge

**APPENDIX C**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. IP 75-677-C

RICHARD A. FRENCH, ET AL., PLAINTIFFS

*vs.*

JACK DUCKWORTH, ET AL., DEFENDANTS

[Filed: July 3, 1997]

**TEMPORARY RESTRAINING ORDER**

This matter came before the Court on consideration of the plaintiffs' motion for a temporary restraining order and a preliminary injunction and brief in support of motion for a temporary restraining order and a preliminary injunction.

Whereupon the Court, having considered the matter and being duly advised in the premises, now finds that a Temporary Restraining Order should, and does issue pursuant to 18 U.S.C. § 1345.

The irreparable harm necessary is established in light of the statutory basis for the issuance of a temporary restraining order under the showing made by the plaintiffs.



THEREFORE, at 2:00 p.m., on this 3rd day of July, 1997, this Court issues a Temporary Restraining Order enjoining and prohibiting the automatic termination provision of the Prison Litigation Reform Act from taking effect.

This Temporary Restraining Order will expire at 2:00 p.m., on the 13th day of July, 1997 and a hearing on the motion for preliminary injunction is set for the 10th day of July, 1997 at 10:30 a.m., in Room 243 of the United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana.

IT IS SO ORDERED.

/s/ S. HUGH DILLIN 7-3-97
S. HUGH DILLIN, Judge

Copies to:
Hamid R. Kashani
Suite 600
445 North Pennsylvania Street
Indianapolis, Indiana, 46204-1806

Kenneth J. Falk
Indiana Civil Liberties Union
1031 East Washington Street
Indianapolis, Indiana, 46202-3952

David A. Arthur
Office of the Indiana Attorney General
Fifth Floor
Indiana Government Center South
402 West Washington Street
Indianapolis, Indiana, 46204-2770

## APPENDIX D

18 U.S.C. 3626 provides in relevant part:

**Appropriate remedies with respect to prison conditions**

(a) REQUIREMENTS FOR RELIEF.—

(1) PROSPECTIVE RELIEF.—(A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

* * * * *

(2) PRELIMINARY INJUNCTIVE RELIEF.—In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the



principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

* * * * *

(b) TERMINATION OF RELIEF.—

(1) TERMINATION OF PROSPECTIVE RELIEF.—(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener—

(i) 2 years after the date the court granted or approved the prospective relief;

(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or

(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF.—In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a

finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

(3) LIMITATION.—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

(4) TERMINATION OR MODIFICATION OF RELIEF.—Nothing in this section shall prevent any party or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

* * * * *

(c) SETTLEMENTS.—

(1) CONSENT DECREES.—In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).

(2) PRIVATE SETTLEMENT AGREEMENTS.—(A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the rein-



statement of the civil proceeding that the agreement settled.

(B) Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law.

(d) STATE LAW REMEDIES.—The limitations on remedies in this section shall not apply to relief entered by a State court based solely upon claims arising under State law.

(e) PROCEDURE FOR MOTIONS AFFECTING PROSPECTIVE RELIEF.—

(1) GENERALLY.—The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.

(2) AUTOMATIC STAY.—Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period—

(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

(B) ending on the date the court enters a final order ruling on the motion.

(3) POSTPONEMENT OF AUTOMATIC STAY.—The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good cause. No postponement shall be permissible because of general congestion of the court's calendar.

(4) ORDER BLOCKING THE AUTOMATIC STAY.—Any order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2) (other than an order to postpone the effective date of the automatic stay under paragraph (3)) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled or whether the order is termed a preliminary or a final ruling.

* * * * *

(g) DEFINITIONS.—As used in this section—

(1) the term "consent decree" means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements;

(2) the term "civil action with respect to prison conditions" means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison;



(3) the term "prisoner" means any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program;

* * * * *

(5) the term "prison" means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

(6) the term "private settlement agreement" means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled;

(7) the term "prospective relief" means all relief other than compensatory monetary damages;

* * * * *

(9) the term "relief" means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements.

Nos. 99-224; 99-582

Supreme Court, U.S.
FILED
NOV 1 - 1999
OFFICE OF THE CLERK

In The

# Supreme Court of the United States

JACK DUCKWORTH, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, *et al.*,

*Petitioners,*

v.

RICHARD A. FRENCH, *et al.*,

*Respondents.*

and

UNITED STATES OF AMERICA,

*Petitioner,*

v.

RICHARD A. FRENCH, *et al.*,

*Respondents.*

**On Petitions For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI

KENNETH J. FALK
*Counsel of Record*
JACQUELYN E. BOWIE
SEAN C. LEMIEUX
E. PAIGE FREITAG
INDIANA CIVIL LIBERTIES UNION
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059

HAMID R. KASHANI
Suite 600
445 N. Pennsylvania St.
Indianapolis, IN 46204
317/632-1000

*Counsel for Respondents*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTION PRESENTED

The Prison Litigation Reform Act, 18 U.S.C. §3626(e)(2), as modified by 18 U.S.C. §3626(e)(3), provides that the filing of a motion to terminate prospective relief operates as a stay of that relief no later than 90 days after the filing of the motion. Three circuit courts, including the Seventh Circuit in this case, have held that the statute cannot be properly interpreted as requiring the trial court, regardless of the circumstances, to stay prospective relief. No circuit has held to the contrary. Two of the circuit courts which have addressed this issue have held that the statute must be interpreted as allowing district courts to retain their equitable powers to enjoin the automatic stay provision provided an adequate showing is met. The court below held that the statute is not readily susceptible to such a narrowing construction. The court further held that the statute is unconstitutional as written because it specifies a rule of decision and more generally because it unconstitutionally intrudes on the power of a court to fulfill its judicial role. At the same time, the Seventh Circuit carefully noted that in considering a termination motion the district court must conform to the time limits in §3626(e)(2) unless compelling reasons are present.

The question presented is whether §3626(e)(2) violates separation of power principles by either unconstitutionally intruding on the power of a court to make a decision or by legislatively specifying a rule of decision.

## PARTIES TO THE PROCEEDING

The petition of the State of Indiana petitioners, Charles B. Miller, Edward L. Cohn and Herbert Newkirk, accurately lists the parties to this proceeding. The petition of the United States also accurately lists all named parties but omits the fact that the respondents proceed on behalf of a certified class of all persons who are or may in the future be confined in the Pendleton Correctional Facility.



## TABLE OF CONTENTS


| | Page |
|---|---|
| Question Presented | i |
| Parties to the Proceeding | ii |
| Table of Contents | iii |
| Table of Authorities | iv |
| Statement of the Case | 1 |
| Argument | 2 |
| Reason for Denying the Writ | 2 |
| I. The conflict in the circuits created by the Seventh Circuit's decision is not significant enough to warrant the exercise of plenary review | 4 |
| II. The Seventh Circuit's decision does not in any way modify or affect the Congressional purpose behind the Prison Litigation Reform Act | 5 |
| III. The Seventh Circuit correctly found that the statute is unconstitutional if it is interpreted as requiring, without exception, the suspension of decrees if motions to terminate are not ruled upon in the proscribed period | 7 |
| Conclusion | 10 |

## TABLE OF AUTHORITIES

Page

CASES:

*Aldinger v. Howard*, 427 U.S. 1 (1976) ..... 5

*French v. Duckworth*, 178 F.3d 437 (7th Cir. 1999) ....*passim*

*Fuller v. Oregon*, 417 U.S. 40 (1974) ..... 5

*Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998) .... 4, 5, 7

*Humphrey's Executor v. United States*, 295 U.S. 602 (1935) ..... 8

*Guttierez de Martinez v. Lamagno*, 515 U.S. 417 (1995) ..... 8

*Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997) ..... 5

*Minnesota Mining Co. v. New Jersey Wood Co.*, 381 U.S. 311 (1965) ..... 5

*Mistretta v. United States*, 488 U.S. 361 (1989) ..... 7

*New York v. Saper*, 336 U.S. 328 (1949) ..... 5

*Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) ..... 8

*Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999) .....4, 5

*United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872) ...8, 9

UNITED STATES CODE:

11 U.S.C. §362(a) ..... 9

18 U.S.C. §3626(b) ..... 2

18 U.S.C. §3626(b)(1) ..... 2

18 U.S.C. §3626(b)(2) ..... 2



## TABLE OF AUTHORITIES – Continued

Page

18 U.S.C. §3626(b)(3) ..... 2

18 U.S.C. §3626(e) .....3, 9

18 U.S.C. §3626(e)(2) ..... *passim*

18 U.S.C. §3626(e)(3) .....i

OTHER AUTHORITIES:

Federal Rules of Civil Procedure, Rule 65 ..... 9

## RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI

The respondents, Richard A. French, Morris E. Dozier, Martin W. Bradberry and Henry C. Jennings, on behalf of a class of all persons who are or may in the future be confined in the Pendleton Correction Facility (hereinafter "the prisoner respondents"), respectfully request that this Court deny the petitions for writ of certiorari filed by both the United States and the Superintendent of the Pendleton Correctional Facility and the other State of Indiana petitioners (hereinafter "State petitioners"), seeking review of the Seventh Circuit's opinion in this case. That opinion is reported at 178 F.3d 437 (7th Cir. 1999).

## STATEMENT OF THE CASE

The Statement of the Case contained in the petitions for writ of certiorari filed by the State petitioners and the Statement contained in the petition for writ of certiorari filed by the United States are incomplete. Neither Statement mentions that the Seventh Circuit's decision emphasized that its ruling was a narrow one which "does not prevent the state from asking that the prospective relief be stayed while an immediate termination motion is pending." 178 F.3d at 447. Additionally, neither Statement mentions that the Seventh Circuit's decision also holds "that the district courts must conform their actions to the time limits in §3626(e)(2) unless compelling reasons for setting them aside can be artiçulated." 178 F.3d at 446. Finally, the Seventh Circuit's decision also emphasizes

that, in the event prompt action is not taken by the district court, the court of appeals "has the power to require either prompt action or a stay of prospective relief by finding that a recalcitrant judge has abused her discretion." 178 F.3d at 447.

## ARGUMENT

### Reason for Denying the Writ

Plenary review of this case is inappropriate because the conflict in the circuits noted in both petitions is more illusory than real. The Prison Litigation Reform Act, 18 U.S.C. §3626(b), provides that, absent a showing of continuing violation of a Federal right and a showing of the continued appropriateness of past orders, prospective relief may be terminated on the motion of any party if specific time periods have elapsed (18 U.S.C. §3626(b)(1)) or if prospective relief was entered without certain required findings (18 U.S.C. §3626(b)(2)). In order to make the determination of a continuing violation and continued appropriateness under 18 U.S.C. §3626(b)(3), the district court may need to conduct an evidentiary hearing. The question is whether the automatic stay proscribed by 18 U.S.C. §3626(e)(2) must go into effect during the district court's consideration of the termination motion. Three circuits have so far reviewed the validity of 18 U.S.C. §3626(e)(2) and all three have held that the statute cannot be construed in the manner suggested by the State petitioners. The courts have not allowed the statute, despite its explicit terms, to cause an injunction to be nullified simply because of the filing of a motion to



vacate the judgment and the passage of time. To be sure, the circuits have drawn different conclusions as to the construction of the statute. The Fifth and Sixth Circuits have interpreted the statute as preserving the traditional equitable powers of the federal courts. The Seventh Circuit, by contrast, rejected the possibility of a narrowing construction and declared the statute unconstitutional. However, as described more fully below, this is a difference in approach more than a difference in outcome. In practical terms, the result in all three circuits is that courts have the power to stop enforcement of the automatic stay proscribed by the statute. Although the United States argues that the Seventh Circuit's construction of the law is erroneous, it merely proposes to give to district courts the right to stay the enforcement of 18 U.S.C. §3626(e)(2) which will lead to the result reached by the Seventh Circuit, the inapplicability of the automatic stay provision. The question of whether the Fifth and Sixth Circuit, as opposed to the Seventh Circuit, was correct in its approach simply is not an issue of significant importance which warrants plenary review.

Nor does the Seventh Circuit's decision in any way nullify or interfere with the recognized goal of the Prison Litigation Reform Act of allowing for the speedy termination of unnecessary and unwarranted decrees mandating court supervision. The Seventh Circuit emphasized that defendants could seek to stay orders pending review by the district court and, if this review was not undertaken within the time frame contemplated by 18 U.S.C. §3626(e), that mandamus from the court of appeals could be sought.

Finally the court of appeals correctly found that the State petitioners' argument that the statute prohibits a court from stopping the automatic stay from going into effect would render the statute unconstitutional under well recognized precedents of this Court.

## I. The conflict in the circuits created by the Seventh Circuit's decision is not significant enough to warrant the exercise of plenary review

In *Hadix v. Johnson*, 144 F.3d 925, 937 (6th Cir. 1998), the court found that interpreting §3626(e)(2) as requiring an automatic stay, no matter the circumstance, once the relevant time period expired, would be "an unconstitutional incursion by Congress into the powers reserved for the judiciary." The court further found that the statute could be interpreted in a constitutional manner by inferring language giving district courts discretionary equitable powers to stay the automatic stay. 144 F.3d at 944-46. This interpretation was later adopted, as well, by the Fifth Circuit in *Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999). The Seventh Circuit decision in this case, on the other hand, found that the language of §3626(e)(2) was not sufficiently elastic to have read into it the language constructed by the Sixth Circuit. Consequently, the Seventh Circuit held the statute to be unconstitutional.

This theoretical conflict simply is not significant enough to warrant the attention of this Court. In the final analysis, all three circuits' decisions reach the same ultimate conclusion, albeit by different routes. The decision below holds that the automatic stay provision is unconstitutional, although a defendant may still apply for and



receive a stay under traditional equitable principles, and *Hadix* and *Ruiz* hold that the trial court retains its traditional equitable authority under the statute notwithstanding its reference to an automatic stay. Therefore, there is nothing in either *Hadix* or *Ruiz* which would require a different result in this case or, indeed, in any case. The continuation of any decree pending completion of the case is subject to the traditional equitable authority of the court.

This court has noted repeatedly that certiorari should be granted to resolve conflict on "important question[s]." *Aldinger v. Howard*, 427 U.S. 1, 3 (1976). *See also, Fuller v. Oregon*, 417 U.S. 40, 42 (1974); *Minnesota Mining Co. v. New Jersey Wood* Co., 381 U.S. 311, 314 (1965); *New York v. Saper*, 336 U.S. 328 (1949). The conflict in this case simply is not important since it may not alter what will actually occur in a district court faced with a motion to terminate prospective relief under the Prison Litigation Reform Act.

## II. The Seventh Circuit's decision does not in any way modify or affect the Congressional purpose behind the Prison Litigation Reform Act

"Congress passed the PLRA in an effort, in part, to oust the federal judiciary from day-to-day prison management." *Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649, 655 (1st Cir. 1997). The State petitioners argue that the writ must be granted because the decision of the Seventh Circuit nullifies this objective. However, the Seventh Circuit stresses that its decision is not a license to delay the resolution of petitions to terminate decrees. The Seventh Circuit notes that:

> Our determination that the automatic stay provision is not enforceable does not mean that courts should not try to conform their conduct to it. Indeed, the contrary is true: we hold that the district courts must conform their actions to the time limits in §3626(e)(2) unless compelling reasons for setting them aside can be articulated. On an interlocutory appeal under §3626(e)(4), this court has the power to require either prompt action or a stay of prospective relief by finding that a recalcitrant judge has abused her discretion.

178 F.3d at 446-447. The Seventh Circuit also states that "[w]e emphasize again that our ruling is a narrow one. It does not prevent the state from asking that the prospective relief be stayed while an immediate termination motion is pending." 178 F.3d 447.

Although the State petitioners note that the district court has never ruled on their original motion to terminate, they neglect to mention that at no point have they ever sought an order staying prospective relief. Nor have they ever sought a mandate from the Seventh Circuit to force the district court to act. Instead they have only litigated this case. The fact that they have not availed themselves of existing constitutional mechanisms to force the district court to act does not mean that the Seventh Circuit's decision has nullified the Congressional objectives behind the Prison Litigation Reform Act. To the contrary, the Seventh Circuit's decision reaffirms the fundamental goal of the Prison Litigation Reform Act to prevent federal courts from using "consent decrees to intrude into a state criminal justice system and seriously



undermine the ability of the local justice system to dispense any true justice." H.R. Rep. No. 21, 104th Cong., 1st Sess. 9 (1995), *as quoted in Hadix*, 144 F.3d at 931.[1]

## III. The Seventh Circuit correctly found that the statute is unconstitutional if it is interpreted as requiring, without exception, the suspension of decrees if motions to terminate are not ruled upon in the proscribed period.

The State petitioners argue that §3626(e)(2) must be interpreted as it is written; it gives no discretion to the trial court and instead mandates suspension of all decrees if a motion to vacate is not ruled upon within the proscribed time period. The Seventh Circuit held that the statute is unconstitutional if interpreted in this fashion.[2] That decision is correct and conforms to prior decisions of this Court.

"[T]he central judgment of the Framers of the Constitution [was] that, within our political scheme, the separation of governmental powers into three coordinate Branches is essential to the preservation of liberty." *Mistretta v. United States*, 488 U.S. 361, 380 (1989). Therefore,

---

[1] Subsequent to the petitions in this cause, the district court set all pending motions for hearing on December 13, 1999.

[2] The Seventh Circuit also rejected the argument raised by the United States that the statute could be interpreted in a constitutional manner. However, as indicated in Section I, *supra*, this disagreement with the position of the United States is not grounds to grant the United States' petition for certiorari since both the United States and the respondents agree that 18 U.S.C. §3626(e)(2) cannot be interpreted as allowing an automatic stay to be invoked regardless of the circumstances.

"each of the three general departments of government [must be] entirely free from the control or coercive influence, direct or indirect, of either of the others." *Humphrey's Executor v. United States*, 295 U.S. 602, 629 (1935). Based on separation of power principles this Court has clearly held that Congress cannot vest the power to review judicial decisions in the other coordinate branches of government. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218 (1995). This is because "the Framers crafted [Article III] . . . with an expressed understanding that it gives the Federal Judiciary the power, not merely to rule on cases, but to decide them, subject to review only by superior courts in the Article III hierarchy." 514 U.S. at 218-19. Yet, under the interpretation advanced by the State petitioners, §3626(e)(2) strips the district courts of the power to decide whether or not to issue a stay and instead the district court is reduced to being a clerk, effectuating the determination of Congress that the decree must be suspended, regardless of the circumstances. The Seventh Circuit decision correctly recognized that, as interpreted by the State petitioners, "(e)(2) represents an unconstitutional legislative encroachment into the powers reserved to the judiciary." 178 F.3d at 446.

Moreover, the State's argument that §3626(e)(2) properly prohibits courts from exercising their judicial powers also violates another principle emanating from separation of power concerns, that Congress cannot "prescribe rules of decision" in pending cases. *United States v. Klein*, 80 U.S. (13 Wall.) 128, 147 (1872). *See also, Guttierez de Martinez v. Lamagno*, 515 U.S. 417, 430 (1995) ("Congress may not 'prescribe rules of decision to the Judicial Department of the government in cases pending before



it.' "). Section 3626(e)(2) mandates the trial court to stay all prospective relief. The district court has no other choice or option but must conform its behavior and judgment to the dictates of Congress. "What is this but to prescribe a rule of the decision of the cause in a particular way?" *Klein*, 80 U.S. (13 Wall.) at 146.[3]

The Seventh Circuit decision therefore correctly applied prior decisions of this Court to reject the arguments of the State petitioners and to conclude that §3626(e)(2) represents an unconstitutional violation of rules stemming from the separation of powers. The statute unconstitutionally places the review of judicial decisions with Congress as opposed to courts and mandates a

---

[3] The State petitioners, as did the dissent from the denial of rehearing *en banc*, argues that the Seventh Circuit's decision calls into question a host of statutes and procedural rules which contain time limits. As the Seventh Circuit noted this is not a procedural rule imposed on the judiciary and it is not a situation where Congress has imposed a time limit on an executive agency. 178 F.3d at 443-45. Instead, it is a rule which imposes a substantive judicial outcome. This is easily distinguished from, for example, the 10 day limit in Rule 65 of the Federal Rules of Civil Procedure for temporary restraining orders, which is designed to protect litigants subject to *ex parte* orders. Contrary to the State petitioner's argument, 18 U.S.C. §3626(e) is also distinguishable from the automatic stay in bankruptcy matters, 11 U.S.C. §362(a). The bankruptcy statute does not impinge upon the power of the federal court since, as noted by the Seventh Circuit below, it "has the effect of preserving the court's equitable powers over the entirety of the bankruptcy estate, not superseding or undermining them." 178 F.3d at 443. Moreover, in the bankruptcy setting "litigants routinely petition the bankruptcy court to modify the stay . . . " 178 F.3d at 444. The Seventh Circuit's holding in no way undermines these other laws and rules.

rule of decision. There is no need to review this decision since it closely conforms to the boundaries established by prior cases.

## CONCLUSION

Certiorari is therefore not warranted. This case does not create a significant conflict with decisions of other circuits. It also does not interfere with the Congressional intent underlying the Prison Litigation Reform Act. Instead, the decision conforms to prior decisions of this Court. There are not grounds for granting either petition and for the foregoing reasons both petitions should be denied.

Respectfully submitted,

KENNETH J. FALK
*Counsel of Record*
JACQUELYN E. BOWIE
SEAN C. LEMIEUX
E. PAIGE FREITAG
Indiana Civil Liberties Union
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059

HAMID R. KASHANI
Suite 600
445 N. Pennsylvania St.
Indianapolis, IN 46204
317/632-1000

*Counsel for Respondents*

Supreme Court, U.S.
FILED
NOV 17 1999
CLERK

(3)

No. 99-582

# In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD A. FRENCH, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

## REPLY BRIEF FOR THE PETITIONER

SETH P. WAXMAN
*Solicitor General*
*Counsel of Record*
*Department of Justice*
*Washington, D.C. 20530-0001*
*(202) 514-2217*

588

# In the Supreme Court of the United States

No. 99-582

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD A. FRENCH, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

## REPLY BRIEF FOR THE PETITIONER

1. Respondents contend that review is unwarranted in this case. Respondents acknowledge (Br. in Opp. 7-10), however, that the court of appeals squarely held that the automatic stay provision of the Prison Litigation Reform Act of 1995 (PLRA), 18 U.S.C. 3626(e) (Supp. IV 1998), is unconstitutional. This Court's review is warranted for that reason alone. See *United States* v. *Gainey*, 380 U.S. 63, 65 (1965).

2. Review is also warranted because there is a conflict in the circuits concerning the correct interpretation of the automatic stay provision. The Fifth and Sixth Circuits have held that the automatic stay provision does not divest a district court of authority to suspend

the automatic stay when the party opposing an immediate termination motion can satisfy the traditional standards for obtaining interim equitable relief. *Ruiz* v. *Johnson*, 178 F.3d 385, 395 (5th Cir. 1999); *Hadix* v. *Johnson*, 144 F.3d 925, 937, 945 (6th Cir. 1998). In contrast, the court below held that the automatic stay provision specifies that, after the statutory postponement period ends, a decree "must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place." Pet. App. 19a.

Respondents concede (Br. in Opp. 4-5) that the decision below conflicts with the decisions in *Ruiz* and *Hadix*. In their view, however, the conflict is only theoretical, because the decision below permits prison officials to seek an interim stay of the decree pending resolution of an immediate termination motion.

Under the Fifth and Sixth Circuits' decisions, however, if an immediate termination motion is not resolved within 90 days, the statutory stay automatically goes into effect unless those *opposing* the immediate termination motion can show that the automatic stay should be suspended under traditional equitable standards. That means that, in order to avoid an automatic stay, those opposing the stay must ordinarily show that an automatic stay of the existing remedial order will cause them irreparable injury and that they are likely to defeat the immediate termination motion. *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). In contrast, under the decision below, if the immediate termination motion is not resolved within 90 days, the relief contained in a court-ordered decree will remain in effect unless *prison officials* can establish a basis for suspending the existing relief in the decree under traditional equitable standards. In particular, in order to obtain a stay of the decree, prison officials would have to show



that the decree is causing them irreparable injury and that they are likely to prevail on the merits of their termination motion. Even then, a court may deny interim relief if it concludes that other equitable factors justify leaving the decree in effect pending a resolution of the motion. See *Yakus* v. *United States*, 321 U.S. 414, 440 (1944).

Because a party seeking interim equitable relief has the burden of making a threshold showing of irreparable injury and probability of success, and because a court has discretion to deny interim relief even when such a showing is made, the question whether those seeking termination of a decree or those opposing it have the burden of demonstrating that interim equitable relief is warranted can have significant practical consequences. Indeed, it is precisely that difference that is reflected in the automatic stay provision. Absent the enactment of the automatic stay provision, prison officials would have the burden of justifying interim equitable relief. The automatic stay provision effectively shifts the burden to those opposing a termination of relief to establish a basis for interim equitable relief. The conflict between the decision below and the decisions in *Ruiz* and *Hadix* therefore warrants review.

3. Respondents also argue (Br. in Opp. 5-7) that the decision below does not impair the purposes of the automatic stay provision, because the court below stated (Pet. App. 21a) that "district courts must conform their actions to the time limits in § 3626(e)(2) unless compelling reasons for setting them aside can be articulated." That argument is unpersuasive for two reasons.

First, the rule announced by the court below is quite different from the regime that Congress sought to impose. Under the court of appeals' rule, if the district court does not resolve the case within 90 days, the

result is to leave the decree in place at least for the duration of an appeal by state officials, and until the case is resolved if the court articulates a compelling reason for the delay. Under the statute, by contrast, the presumptive result of delay is for the statutory stay to take immediate effect; the decree remains in place only if the court finds traditional equitable grounds for suspending the stay.

Second, even assuming the court of appeals' rule is identical in substance to the rule Congress sought to impose, the court below failed to provide any rationale for its holding that a court must comply with the statutory time limit unless it has a compelling reason for setting it aside. If an Act of Congress is constitutional, a court must comply with its terms, regardless of how strong the court's reasons are for setting them aside. If, on the other hand, a statute is unconstitutional, a court would not need any reason, much less a compelling reason, for failing to comply with its mandate. The court of appeals therefore had no authority to declare the automatic stay provision unconstitutional, and then direct lower courts to follow its mandate unless they have compelling reasons for setting it aside. See *Reno* v. *ACLU*, 521 U.S. 844, 882-884 (1997) (after declaring a statute unconstitutional, a court may leave intact textually severable provisions and may impose a limiting construction when the statute is readily susceptible to such a construction, but it may not rewrite the law to conform to constitutional requirements).

4. Finally, respondents contend (Br. in Opp. 7-10) that the court of appeals correctly held that, if the automatic stay provision strips federal courts of authority to issue interim equitable relief, it is unconstitutional. The cases cited by petitioner demonstrate that, if the



statute were interpreted to foreclose a court from suspending the automatic stay under traditional equitable standards, it would raise a serious constitutional question. But that is simply another reason that the court of appeals should have interpreted the statute not to foreclose a court from issuing such interim relief. The court of appeals' failure to interpret the statute in a way that would have avoided a serious constitutional question warrants this Court's review.

* * * * *

For the reasons discussed above as well as those set forth in our petition, the petition for a writ of certiorari should be granted.

SETH P. WAXMAN
*Solicitor General*

NOVEMBER 1999

Feb 3 2000

(5) (4)

Nos. 99-224, 99-582

Supreme Court, U.S.
FILED
FEB 3 2000
CLERK

# In the Supreme Court of the United States

CHARLES B. MILLER, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, *et al.*,
*Petitioners,*

*v.*

RICHARD A. FRENCH, *et al.*,
*Respondents.*

On Writs of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

## BRIEF OF PETITIONERS CHARLES B. MILLER, *et al.*

JEFFREY A. MODISETT
*Attorney General of Indiana*

JON LARAMORE
*Counsel of Record*
WAYNE E. UHL
GEOFFREY G. SLAUGHTER
*Deputy Attorneys General*
219 State House
Indianapolis, IN 46204
317-233-6582

38pp

## Question Presented

The Prison Litigation Reform Act, 18 U.S.C. §3626, requires federal courts, upon a state's petition, to terminate injunctions governing prison operations where the injunctions are not necessary to correct the violation of a federal right. Section 3626(e) encourages prompt judicial action on states' petitions to terminate by automatically suspending the prospective effect of the injunction if the court does not rule on the petition to terminate within 90 days.

1. Does a district court have authority to suspend §3626(e) under traditional equitable standards?

2. Does §3626(e) violate separation-of-powers principles by legislatively specifying a rule of decision or legislatively annulling a judgment?

## Parties Below

*Plaintiffs*

Richard A. French
Morris E. Dozier
Martin W. Bradberry
Henry C. Jennings
On behalf of a class of all persons who are or may in the future be confined in the Pendleton Correctional Facility, Pendleton, Indiana

*Defendants*

Charles B. Miller, Superintendent of the Pendleton Correctional Facility

Edward L. Cohn, Commissioner, Indiana Department of Correction

Steve McCauley, Regional Director, Indiana Department of Correction

*Intervenor*

United States of America



## Table of Contents


Question Presented ..... i

Parties Below ..... ii

Opinions Below ..... 1

Jurisdiction ..... 2

Relevant Statutes ..... 2

Statement of the Case ..... 4

Summary of the Argument ..... 10

Argument ..... 13

I. The stay in §3626(e)(2) is automatic, and federal courts lack the equitable power to extend it beyond 90 days. ..... 13

II. Section 3626(e)(2) does not violate separation-of-powers principles ..... 18

A. The PLRA does not unconstitutionally suspend a judicial order ..... 18

B. Section 3626(e)(2) does not prescribe a rule of decision in a specific case ..... 26

Conclusion ..... 29

## Table of Authorities

### *Cases*

*Atlantic Mut. Ins. Co. v. Commissioner*, 523 U.S. 382 (1998) ..... 14
*Bell v. Wolfish*, 441 U.S. 520 (1979) ..... 16, 28
*Benjamin v. Jacobson*, 172 F.3d 144 (2d Cir. 1999) (*en banc*), *cert. denied*, 120 S.Ct. 72 (1999) ..... 28
*Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999) ..... 28
*Cagle v. Hutto*, 177 F.3d 253 (4th Cir. 1999) ..... 23, 24
*California v. Grace Brethren Church*, 457 U.S. 393 (1982) ..... 21
*Clinton v. Jones*, 117 S.Ct. 1636 (1997) ..... 19
*Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986) ..... 15, 19, 20
*Dougan v. Singletary*, 129 F.3d 1424 (11th Cir. 1997), *cert. denied*, 118 S.Ct. 2375 (1998) ..... 28
*Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Cncl.*, 485 U.S. 568 (1983) ..... 15
*Freeman v. Pitts*, 503 U.S. 467 (1992) ..... 28
*French v. Duckworth*, 178 F.3d 437 (7th Cir. 1999) ..... 1
*French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982), *aff'd in part, rev'd in part*, 777 F.2d 1250 (7th Cir. 1985), *cert. denied*, 479 U.S. 817 (1986) ..... 4
*Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997), *cert. denied*, 118 S.Ct. 2374 (1998) ..... 28
*Glover v. Johnson*, 138 F.3d 229 (6th Cir. 1998) ..... 16
*Hadix v. Johnson*, 133 F.3d 940 (6th Cir. 1998) ..... 28
*Hadix v. Johnson*, 144 F.3d 925 (6th Cir.), *cert. denied*, 118 S.Ct. 2368 (1998) ..... 8, 13, 23, 27
*Hanna v. Plumer*, 380 U.S. 460 (1965) ..... 21
*Harvey v. Schoen*, 51 F.Supp.2d 1001 (D.Minn. 1999) ..... 24
*Hayburn's Case*, 2 Dall. 409 (1792) ..... 22
*Imprisoned Citizens Union v. Ridge*, 169 F.3d 178 (3d Cir. 1999) ..... 28

*Imprisoned Citizens Union v. Shapp*, 11 F.Supp.2d 586 (E.D.Pa. 1998) ..... 24
*Inmates of Suffolk Co. Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997) ..... 28
*Ingalls Shipbuilding, Inc. v. Director*, 519 U.S. 248 (1997) ..... 14
*Lauf v. E.G. Shinner & Co.*, 303 U.S. 323 (1938) ..... 21
*Lewis v. Casey*, 518 U.S. 343 (1996) ..... 16, 28
*Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998) ..... 14
*Lockerty v. Phillips*, 319 U.S. 182 (1943) ..... 21
*Loving v. United States*, 517 U.S. 748 (1996). ..... 19
*Missouri v. Jenkins*, 515 U.S. 70 (1995) ..... 28
*Mistretta v. United States*, 488 U.S. 361 (1989) ..... 19
*Morrison v. Olson*, 487 U.S. 654 (1988) ..... 20
*Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206 (1998) ..... 15
*Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) ..... 12, 22
*Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996), *cert. denied*, 520 U.S. 1277 (1997) ..... 28
*Robertson v. Seattle Audubon Soc.*, 503 U.S. 429 (1992) ..... 28
*Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992) ..... 25
*Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999) ..... 8, 13
*Thompson v. Gomez*, 993 F. Supp. 749 (N.D. Cal. 1997) ..... 24
*United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871) ..... 8, 26, 27, 28
*United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980) ..... 26
*Vasquez v. Carver*, 18 F.Supp.2d 503 (E.D.Pa. 1998) ..... 24
*Watson v. Ray*, 192 F.3d 115 (8th Cir. 1999) ..... 23, 24

***Constitutional Provisions***

Article III ..... 19, 20



***Statutes***

11 U.S.C. § 362(a)(2) ..... 20
18 U.S.C. § 3626 ..... i, 9
18 U.S.C. § 3626(a)(1)(A) ..... 5
18 U.S.C. § 3626(b) ..... 2, 23, 25, 27, 28
18 U.S.C. § 3626(b)(1) ..... 21
18 U.S.C. § 3626(b)(2) ..... 6, 7, 9, 18, 22, 23
18 U.S.C. § 3626(b)(3) ..... 6, 12, 18, 21, 23
18 U.S.C. § 3626(e) ..... i, 3, 9, 26
18 U.S.C. § 3626(e)(1) ..... 6, 13, 16
18 U.S.C. § 3626(e)(2) ..... passim
18 U.S.C. § 3626(e)(2)(B) ..... 18
18 U.S.C. § 3626(e)(3) ..... 6, 14, 16
18 U.S.C. § 3626(e)(4) ..... 13, 14
28 U.S.C. § 1254(1) ..... 2
28 U.S.C. § 1292(a)(1) ..... 7
28 U.S.C. § 1915A ..... 5
29 U.S.C. § 107 ..... 20
42 U.S.C. § 1997e ..... 5
P.L. 104-134 (1996) §§801-810 ..... 5
P.L. 104-134 (1996) § 802 ..... 6
P.L. 105-119, § 123(a)(3)(C) ..... 6

***Legislative History***

141 Cong. Rec. H14106 (Dec. 6, 1995) ..... 16
142 Cong. Rec. S3703 (Apr. 19, 1996) ..... 16
143 Cong. Rec. S12269 (Nov. 9, 1997) ..... 16
H.R. Rept. No. 104-21, *Violent Criminal Incarceration Act of 1995* (1995) ..... 15

***Other Authorities***

Administrative Ofc. of the U.S. Courts, *Federal Court Mgmt. Statistics* (1996) ..... 5

Administrative Ofc. of the U.S. Courts, *Federal Court Mgmt. Statistics* (1998) ..... 5
Paul M. Bator, *Congressional Power Over the Jurisdiction of the Federal Courts*, 27 Vill. L. Rev. 1030 (1982) ..... 21
Ira Bloom, *Prisons, Prisoners, and Pine Forests: Congress Breaches the Wall Separating Legislative from Judicial Power*, 40 Ariz. L. Rev. 389 (1998) ..... 17
Deborah Dekker, *Consent Decrees & the Prison Litigation Reform Act of 1995: Usurping Judicial Power or Quelling Judicial Micro-Management?*, 1997 Wisc. L. Rev. 1275 . 17
Federal Judicial Center, *Resource Guide for Managing Prisoner Civil Rights Litigation* (1996) ..... 17
*The Federalist* No. 47 (J. Cooke ed. 1961) ..... 19
Gerald Gunther, *Congressional Power to Curtail Federal Court Jurisdiction: An Opinionated Guide to the Ongoing Debate*, 36 Stan. L. Rev. 895 (1984) ..... 21
Henry M. Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 Harv. L. Rev. 1362 (1953) ..... 22
Daniel J. Meltzer, *Congress, Courts, and Constitutional Remedies*, 86 Geo. L.J. 2537 (1998) ..... 27
Note, *Peanut Butter & Politics: An Evaluation of the Separation-of-Powers Issues in Section 802 of the Prison Litigation Reform Act*, 73 Ind. L.J. 329 (1997) ..... 17
Note, *Return to Hard Time: The Prison Litigation Reform Act of 1995*, 31 Ga. L. Rev. 879 (1997) ..... 17
Note, *The End of the Prison Law Firm: Frivolous Inmate Litigation, Judicial Oversight, and the Prison Litigation Reform Act of 1995*, 29 Rutgers L.J. 361 (1998) ..... 17
Note, *The Prison Litigation Reform Act of 1995: A Legitimate Attempt to Curtail Frivolous Inmate Lawsuits and End the Alleged Micro-Management of State Prisons or a Violation of Separation of Powers?*, 63 Brooklyn L. Rev. 319 (1997) ..... 17
Lawrence Gene Sager, *Foreward: Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts*, 95 Harv. L. Rev. 1 (1981) ..... 22



Laurence H. Tribe, *Jurisdictional Gerrymandering: Zoning Disfavored Rights out of the Federal Courts*, 16 Harv. C.R.-C.L. L. Rev. 129 (1981) ..... 22
Julian Velasco, *Congressional Control Over Federal Court Jurisdiction: A Defense of the Traditional View*, 46 Cath. U. L. Rev. 671 (1997) ..... 21
*Webster's Third New Int'l Dictionary* (unabridged ed. 1986) ..... 14

**Rules**

Seventh Circuit Rule 40(a) ..... 2, 8
Fed. R. Civ. P. 37 ..... 24
Fed. R. Civ. P. 52 ..... 28
Fed. R. Civ. P. 65(b) ..... 20

Nos. 99-224, 99-582

# In the Supreme Court of the United States

CHARLES B. MILLER, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, *et al.*,
*Petitioners,*

*v.*

RICHARD A. FRENCH, *et al.*,
*Respondents.*

On Writs of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

## BRIEF OF PETITIONERS CHARLES B. MILLER, *et al.*

### Opinions below

The Seventh Circuit's opinion is reported at 178 F.3d 437 (7th Cir. 1999). It is printed in the Appendix to Miller's Petition for Certiorari (Pet. App.) at 11 to 43.

The District Court's Order Granting Plaintiffs' Motion for Preliminary Injunction is unreported. It is printed in the Appendix to the Petition for Certiorari at 9 to 10.

## Jurisdiction

The Court of Appeals issued its opinion May 6, 1999. The Court of Appeals denied rehearing under its Circuit Rule 40(a) on May 6, 1999. Miller's petition for certiorari, docketed as 99-224, was filed on August 3, 1999. It was granted on December 6, 1999, as was the United States' petition docketed as 99-582 . This Court has jurisdiction under 28 U.S.C. §1254(1).

## Relevant Statutes

18 U.S.C. §3626(b) Termination of relief.--

(1) Termination of prospective relief.--(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener--

(i) 2 years after the date the court granted or approved the prospective relief;

(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or

(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

(2) Immediate termination of prospective relief.--In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.



(3) Limitation.--Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

(4) Termination or modification of relief.--Nothing in this section shall prevent any party or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

18 U.S.C. §3626(e) Procedure for motions affecting prospective relief.--

(1) Generally.--The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.

(2) Automatic stay.--Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period--

(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

(B) ending on the date the court enters a final order ruling on the motion.

(3) Postponement of automatic stay.--The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good

cause. No postponement shall be permissible because of general congestion of the court's calendar.

(4) Order blocking the automatic stay.--Any order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2) (other than an order to postpone the effective date of the automatic stay under paragraph (3)) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled or whether the order is termed a preliminary or a final ruling.

**Statement of the Case**

1. This litigation began in 1975 with the filing of a complaint on behalf of a class of prisoners at the Indiana Reformatory (now Pendleton Correctional Facility) alleging unconstitutional conditions of confinement. The case was tried, and the trial court entered a remedial injunction in 1982. *French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982), *aff'd in part, rev'd in part*, 777 F.2d 1250 (7th Cir. 1985), *cert. denied*, 479 U.S. 817 (1986).

The district court's order broadly regulated prison operations. It set a cap on prison population and set standards for medical care, food preparation, use of physical restraints, recreation, and non-punitive segregation of prisoners. It also established due process standards for prison discipline; required provision of substance abuse and mental health services; established policies for provision of education, vocational training, and prison jobs; and required compliance with certain fire code and job safety standards. 777 F.2d at 1251-58.

The last substantive modification to the injunction occurred on October 6, 1988, when the parties entered a



stipulation regarding fire and safety standards. Jt. App. 44-45.

2. Congress enacted the Prison Litigation Reform Act of 1995 (PLRA) as §§801-810 of Public Law 104-134 (1996). The PLRA was designed to accomplish two objectives relating to federal court involvement in litigation involving prisoners. First, the PLRA was designed to curtail frivolous litigation by individual prisoners. For example, the law mandated judicial screening of prisoners' lawsuits at the initial stage, 28 U.S.C. §1915A, and placed a variety of limits on prisoners' lawsuits challenging prison conditions, 42 U.S.C. §1997e. As a result, new federal lawsuits by prisoners in the United States' courts have been reduced from 68,235 in 1996 to 54,715 in 1998. Administrative Ofc. of the U.S. Courts, *Federal Court Mgmt. Statistics* p. 167 (1996); *id.* (1998).

Second, the PLRA limits federal court injunctions and consent decrees governing the operation and administration of prisons. Under the PLRA, a federal court addressing prison conditions may order injunctive relief only if it "extend[s] no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. §3626(a)(1)(A). The federal court also must make specific findings that its injunction "is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." *Id.*

The PLRA applies the same standard to existing litigated injunctions and consent decrees governing prisons. The PLRA requires federal courts to terminate existing injunctions governing prison conditions on any party's motion, once the injunction has been in effect for two years, "if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends

no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. §3626(b)(2). The district court may continue the injunction only if it finds that the injunction is "necessary to correct a current and ongoing violation of the Federal right." *Id.* at (b)(3).

Sections 3626(b)(2) and (3) thus mandate a two-step process for applying the PLRA to existing prison injunctions. When prison officials file a motion to terminate or modify, the district court first must determine whether the existing decree contains the findings required by §3626(b)(2). If the findings are not present, the district court must terminate or modify the decree except in one circumstance: the court may continue equitable relief if the prisoners show the need for an injunction to remedy current unconstitutional conditions. 18 U.S.C. §3626(b)(3). Even then, the injunction may be no broader than necessary to cure the current constitutional infirmity. *Id.*

The PLRA also specifies time limits for district courts to rule on prison officials' motions to terminate or modify prison injunctions. District courts are required to rule "promptly" on such a motion, 18 U.S.C. §3626(e)(1), and if the motion is not ruled on in 30 days (extendable to 90 days[1]), the injunction loses its prospective effect until the district court rules. 18 U.S.C. §3626(e)(2). This "automatic stay" provision of PLRA – staying the prospective effect of prison injunctions if the district court does not rule on the

[1] At the time the State moved to terminate the injunction, the PLRA provided that the automatic suspension would take effect 30 days after the motion was filed. P.L. 104-134, §802 (Apr. 26, 1996), codified at 18 U.S.C. §3626(e)(2). Congress later modified the PLRA to permit district courts to extend by 60 days the time for acting on the motion to terminate or modify. P.L. 105-119, §123(a)(3)(C), codified at 18 U.S.C. §3626(e)(3).



motion to terminate within 30 days (extendable to 90 days) – is the provision invalidated by the Seventh Circuit in this case.

3. On June 5, 1997, the State moved to terminate the injunctive order. The plaintiff class moved for a temporary restraining order and preliminary injunction, arguing that §3626(e)(2) is unconstitutional.

The district court entered a temporary restraining order and, after hearing, a preliminary injunction enjoining operation of 18 U.S.C. §3626(e)(2).[2] The State appealed the entry of the preliminary injunction under 28 U.S.C. §1292(a)(1).

The State's motion to terminate the injunction is now set for hearing on the merits in June 2000.

4. The Seventh Circuit panel affirmed the district court's ruling that §3626(e)(2) is an unconstitutional violation of separation of powers. The panel also rejected the construction of §3626(e)(2) advanced by the Department of Justice, and adopted by the Fifth and Sixth Circuits, which abrogates the automatic nature of the stay in §3626(e)(2).

The Department of Justice, which had intervened below, asserted that §3626(e)(2) would be unconstitutional

[2] The district court's Order Granting Plaintiffs' Motion for Preliminary Injunction refers to 18 U.S.C. §3626(b)(2), not §3626(e)(2). Pet. App. 9. But the parties, the Seventh Circuit panel, and judges dissenting from denial of rehearing *en banc* all agreed that the injunction intended to refer to §3626(e)(2), and the reference to (b)(2) was erroneous. Appellees' Brief at 10; Pet. App. 17; Pet. App. 32 (Easterbrook, J., dissenting from denial of rehearing *en banc*). The transcript of the district court hearing clearly shows that §3626(e)(2) was at issue. Jt. App. 57-58, 60, 63. No party argues that the district court's order enjoined any provision other than §3626(e)(2).

unless district courts could decline to apply the automatic stay when "factual complexity or other factors" rendered the statutory time period inadequate to decide the termination motion. Pet. App. 20. It argued that a district court could stay the effect of §3626(e)(2) indefinitely when equity required. *Id.* Although the Fifth and Sixth Circuits adopted this interpretation, *Hadix v. Johnson*, 144 F.3d 925, 944-46 (6th Cir. 1998); *Ruiz v. Johnson*, 178 F.3d 385, 393-94 (5th Cir. 1999), the Seventh Circuit panel did not, concluding that the congressional command in §3626(e)(2) is clear and leaves no room for judicial discretion. Pet. App. 21-23.

The panel then ruled unanimously that §3626(e)(2) is an unconstitutional legislative intrusion into the judicial realm, violating separation-of-powers principles. Pet. App. 24-29. The panel held that the section requires a certain outcome (ceasing prospective effect of the injunction) unless the district court acts by a congressionally specified deadline, and thus unconstitutionally enacts legislative suspension of an existing court order: "it is a self-executing legislative determination that a specific decree of a federal court — here the decree addressing conditions at Pendleton — must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place. This amounts to an unconstitutional intrusion on the power of the courts to adjudicate cases." Pet. App. 26-27. The Seventh Circuit panel also found the statute unconstitutional on the independent separation-of-powers ground that §3626(e)(2) prescribes a rule of decision in a particular case, violating the principle of *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871). Pet. App. 28-29.

Recognizing the different approach of the Sixth Circuit in *Hadix v. Johnson*, 144 F.3d 925, the panel circulated its decision to all active circuit judges under Seventh Circuit Rule 40(a). Chief Judge Posner and Circuit Judges Easterbrook and Manion dissented from the denial of



rehearing *en banc*. The three dissenters noted that this case provides a good example of the very judicial conduct Congress sought to prevent by enacting the PLRA. Congress sought "prompt" disposition of motions to vacate prison conditions injunctions, but the district judge who declared §3626(e) unconstitutional did nothing whatsoever to rule on or otherwise advance litigation on the motion to vacate for the entire two-year period between his injunction and the Seventh Circuit's opinion. Pet. App. 34.

The dissenters observed that the statute does not tell the judge how to rule; it only suspends the prospective effect of the injunctive decree if the district court does not rule within 90 days. The dissenters stated that §3626(e)(2) is necessary to effectively implement the substantive requirements of §3626(b)(2), which specifies standards for federal court decrees governing prison conditions. Pet. App. 36-37. It is "a mechanism to ensure the application of the new rules to the stock of existing decrees . . . so that state and local governments may regain control of their institutions once an injunction has achieved its purpose of correcting violations of federal law." Pet. App. 35.

The dissenters concluded that the requirement for prompt adjudication in §3626 violates no constitutional principle. It does not command the district court how or when to rule, but only precludes the parties from taking advantage of a judgment if the district court does not rule "promptly," as the law requires. Pet. App. 36. Like other time limits on judicial action, §3626(e)(2) does not intrude on the judicial function, but protects parties from unwarranted judicial intrusion. Pet. App. 37-39. Because the automatic stay provision of §3626(e)(2) merely enforces the statutory promptness requirement, it is not unconstitutional. Pet. App. 36-38.

## Summary of the Argument

I. Section 3626(e)(2) contains an automatic stay that is not subject to equitable extension. The stay is automatic to accomplish the congressional objective of providing incentives for district courts to promptly process motions to terminate prison injunctions. The statute gives no support to the interpretation of the Fifth and Sixth Circuits and the Department of Justice that the automatic stay may be extended beyond the statutory limit.

The language of §3626(e)(2) is the clearest evidence that Congress intended the stay to be automatic and not extendable. The section is labeled "automatic stay" and says that the stay "shall" go into effect if the district court has failed to rule on the motion to terminate within 30 days (extendable to 90 days). This language shows congressional intent to make the stay automatic and not subject to further extension. The legislative history supports this interpretation without contradiction.

This interpretation is the only one in accord with the purpose of the PLRA. As this Court has noted in previous opinions, district courts occasionally intrude too far into the prerogatives of State and local officials who operate prisons. The PLRA was designed to give those officials a mechanism to obtain prompt judicial action in situations where court supervision of prison administration has become unnecessary. Without the deadlines in §3626(e)(2), prison officials lack a mechanism for ensuring quick judicial attention to their motions to terminate judicial supervision of prisons.

The clear statutory language, legislative history, and manifest purpose of the PLRA preclude application of the



doctrine of constitutional doubt, which the Department of Justice has invoked in support of its construction. Where congressional intent is clear, the doctrine of constitutional doubt may not be employed to alter the meaning of the statute. Because congressional intent is clear that the stay be automatic, no further indication is necessary of congressional desire to pre-empt the exercise of federal equitable powers to extend the stay.

II. The automatic stay does not violate separation of powers principles.

A. The automatic stay does not legislatively suspend a judicial order. Instead, it sets a time limit for action on a motion, then prescribes consequences that ensue if the deadline is not met.

The statute does not vacate or terminate the injunction, but only suspends it beginning 30 days (extendable to 90 days) after the motion is filed until the district court rules on the motion. The automatic stay thus is similar to the automatic termination of temporary restraining orders in Rule 65, the automatic expiration of injunctions under the Norris-LaGuardia Act, and the automatic stay in bankruptcy. In each of these cases, an injunctive order ceases to have prospective effect until a court acts. Section 3626(e)(2) is consistent with this Court's decisions giving Congress wide discretion to regulate federal courts' remedial power.

Section 3626(e)(2) does not encroach upon the judicial function or aggrandize power to the legislative branch. Rather, it places a slight burden on the judicial branch in the form of a time limit, but it does not alter the core power of the judiciary to decide cases or otherwise disturb the allocation of power among the branches. Section 3626(e)(2) does not mandate any particular decision in a

case, nor does it detract from the courts' power to remedy any wrongs they find. Indeed, §3626(b)(3) explicitly requires federal courts to continue injunctive relief if necessary to remedy ongoing federal violations. But – in accordance with law predating the PLRA – federal courts are required to terminate injunctive relief when it no longer is necessary to correct federal law violations.

Contrary to the Seventh Circuit's decision, §3626(e)(2) does not violate the rule of *Plaut v. Spendthrift Farm*, 514 U.S. 211 (1995). *Plaut* addresses legislative power to alter final judgments in cases dismissed with prejudice; §3626(e)(2) affects only ongoing injunctions that continue to govern prison administration. The Constitution does not prohibit Congress from requiring the courts to re-examine injunctions with prospective effect.

Section 3626(e)(2) also does not have the practical effect of precluding prisoners from obtaining necessary relief. All of the cases to which §3626(e)(2) applies already have injunctions in place, and prisoners and their attorneys should therefore be aware of any unconstitutional conditions in their prisons well before any motion to terminate is filed.

B. Section 3626(e)(2) also does not mandate a rule of decision in a specific case. Rather, it changes the procedure applicable to motions to terminate ongoing injunctions without instructing courts whether to grant or deny those motions. Section 3626(e)(2) neither prescribes a rule of decision, withdraws judicial jurisdiction, nor mandates the outcome of a motion to terminate an injunction.



## Argument

### I. The stay in §3626(e)(2) is automatic, and federal courts lack the equitable power to extend it beyond 90 days.

The stay in §3626(e)(2) was intended by Congress to be automatic, and it is not subject to federal courts' general equitable powers to extend it beyond the period fixed in the statute. The Seventh Circuit properly held that the Fifth and Sixth Circuits incorrectly interpreted the statute, rendering the stay in §3626(e)(2) not automatic, but essentially discretionary. *Hadix*, 144 F.3d 925; *Ruiz*, 178 F.3d 385. It is clear that Congress intended the automatic stay in §3626(e)(2) to be mandatory, and to interpret it otherwise would do fatal violence to the will of Congress.

The Fifth and Sixth Circuits' interpretations, adopting the Department of Justice's approach, effectively construe the automatic stay out of the statute. The Fifth and Sixth Circuits permit district courts to enjoin the automatic stay for a variety of equitable reasons, rewriting the law to wholly frustrate congressional purpose. The Seventh Circuit properly recognized that §3626(e)(2) restricts the equitable powers of the district courts by making the stay of prospective application of prison injunctions automatic. Pet. App. 22-23.[3]

[3] The effect of the Fifth and Sixth Circuits' opinions is, however, largely identical to the effect of the Seventh Circuit's invalidation of §3626(e)(2). Prison officials have no effective means to require district courts to rule promptly on motions to terminate prison injunctions in any of the three circuits. In the Fifth and Sixth Circuits, decisions to equitably stay the automatic stay are automatically appealable under 18 U.S.C. §3626(e)(4). In the Seventh Circuit, the only remedy for failure to act promptly is mandamus under 18 U.S.C. §3626(e)(1).

The very language of the statute negates the contention that §3626(e)(2) can itself be equitably stayed. The subsection is entitled "automatic stay," and the term "automatic" connotes involuntariness and independence from outside cause. *Webster's Third New Int'l Dictionary* 148 (unabridged ed. 1986). This clear language embodies the expressed intent of Congress and should both begin and end statutory construction absent an ambiguity. *See Atlantic Mut. Ins. Co. v. Commissioner*, 523 U.S. 382, 118 S.Ct. 1413, 1416 (1998) (plain language is key element in statutory construction); *Ingalls Shipbuilding, Inc. v. Director*, 519 U.S. 248, 254 (1997) (same).

The statutory language mandates that the motion to terminate "*shall* operate as a stay" once 30 days (extendable to 90 days) pass without ruling on the motion, with the stay ending on the date the motion is ruled upon. 18 U.S.C. §3626(e)(2) (emphasis added). The mandatory "shall" language supports the automatic nature of the stay. *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 118 S.Ct. 956, 962 (1998) (the word "shall" "normally creates an obligation impervious to judicial discretion"). Section 3626(e)(3), which provides for one 60-day extension of the stay for "good cause" similarly indicates that no additional extension is permitted under the law for any reason.

The immediate appeal provision also shows congressional intent that the stay be truly automatic. It was added to ensure that any district court decision that treated the stay as other than automatic would be immediately reviewed by an appellate court, ensuring that the application (and, if necessary, the constitutionality) of the automatic stay would be subjected to appellate review as soon as possible. Pet. App. 23. The immediate appeal provision, §3626(e)(4), permits an immediate appeal of any order that attempts to evade the automatic stay, "regardless of how the order is



styled or whether the order is termed a preliminary or a final ruling." It reinforces the conclusion that the stay is automatic and cannot be suspended. Pet. App. 23.

Because of the clear statutory language making the stay automatic, the doctrine of constitutional doubt does not support the Department of Justice's position. Although courts may construe a statute to save it from constitutional infirmities, *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 841 (1986) ("*Schor*"), they may not construe it in a manner that negates Congress's intent. *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Cncl.*, 485 U.S. 568, 575 (1988). Because congressional intent to make the stay automatic is clear, the Department of Justice's construction is unsupportable. *See Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998) (doctrine of constitutional doubt applies only when the statutory language is ambiguous).

The legislative history also supports the State's construction. The Conference Report on the statute stressed that the stay is automatic to give district courts incentives to rule quickly. "Under current law, law enforcement and other local officials are often handcuffed in their efforts to modify or terminate unnecessary and burdensome consent decrees o[r] other orders by judge[s] who stonewall and simply refuse, for many months or even years, to issue a ruling on a request for modification or termination. . . . By providing that the prospective relief that is subject to the motion will be stayed if the motion is not decided promptly, judges will be motivated to decide the motions and avoid having the stay automatically take effect." H.R. Rept. No. 104-21, *Violent Criminal Incarceration Act of 1995*, at 26 (1995) (section-by-section summary).

The Senate sponsor of the 1997 amendments to the PLRA, adding the 60-day extension, said that the

amendments "clarify that the stay . . . in fact is automatic by expressly modeling it on the bankruptcy automatic stay, and [the amendments] state explicitly that any order blocking the automatic stay is appealable, thereby ensuring review of the district court's action." 143 Cong. Rec. S12269 (Nov. 9, 1997) (statement of Sen. Abraham).

The problem Congress addressed in this section is not imaginary. The Court has examined district court decrees that were "inordinately – indeed wildly – intrusive" upon prison officials' responsibilities. *Lewis v. Casey*, 518 U.S. 343, 362 (1996). The Court has criticized judges for becoming "enmeshed in the minutiae of prison operations" owing to their "natural tendency to believe that their individual solutions to often intractable problems are better and more workable" than prison officials' solutions. *Bell v. Wolfish*, 441 U.S. 520, 562 (1979). *See also Glover v. Johnson*, 138 F.3d 229, 233 (6th Cir. 1998) (noting district court's "loss of proper perception regarding its role," delving too far into the "minutiae" of prison administration). Such district court actions led congressional supporters of the PLRA to criticize judicial "micromanagement" of prisons. *See* 142 Cong. Rec. S3703 (Apr. 19, 1996) (statement of Sen. Abraham); 141 Cong. Rec. H14106 (Dec. 6, 1995) (statement of Rep. Canady).

The automatic stay in §3626(e)(2) was intended to give district courts incentives to act promptly on prison officials' motions to modify or vacate injunctive orders. "Deadlines are essential lest these [substantive] rules [in the PLRA] prove nugatory, so §3626(e)(1) requires the court to decide motions to terminate 'promptly', and §3626(e)(2) quantifies 'prompt' as within 30 days, with a possible extension to 90 days under §3626(e)(3)." Pet. App. 35 (Easterbrook, J., dissenting from denial of rehearing *en banc*). If the automatic stay is not in fact automatic – if district courts can themselves extend the statutory 90-day



period – the incentives Congress intended are erased. The purpose of this portion of the PLRA then would be eviscerated.

The Department of Justice has argued that district courts retain the inherent equitable authority to decline to enforce the automatic stay because no statute clearly ousts that power.[4] In light of the clear statutory language making the stay automatic, the legislative history, and the manifest purpose of §3626(e)(2), no further congressional statement limiting district courts' general equitable authority is necessary to show congressional intent. Section 3626(e)(2) negates general equitable authority to "stay the stay."

The Court should reject the Department of Justice's suggestion that the automatic stay is not automatic. And for

---

[4] The unusual nature of the Justice Department's construction is shown by commentary contemporaneous with enactment of the PLRA. Across a wide range of substantive views on the statute, all commentators interpret the automatic stay as the Seventh Circuit did. None adopted the Department of Justice's position that the stay itself may be enjoined under standard equitable principles. *See, e.g.*, Federal Judicial Center, *Resource Guide for Managing Prisoner Civil Rights Litigation* 49 (1996) (stay is automatic); Ira Bloom, *Prisons, Prisoners, and Pine Forests: Congress Breaches the Wall Separating Legislative from Judicial Power*, 40 Ariz. L. Rev. 389, 410 (1998) (same); Note, *The End of the Prison Law Firm: Frivolous Inmate Litigation, Judicial Oversight, and the Prison Litigation Reform Act of 1995*, 29 Rutgers L.J. 361, 378 (1998) (same); Note, *The Prison Litigation Reform Act of 1995: A Legitimate Attempt to Curtail Frivolous Inmate Lawsuits and End the Alleged Micro-Management of State Prisons or a Violation of Separation of Powers?*, 63 Brooklyn L. Rev. 319, 324 (1997) (same); Note, *Peanut Butter & Politics: An Evaluation of the Separation-of-Powers Issues in Section 802 of the Prison Litigation Reform Act*, 73 Ind. L.J. 329, 344 (1997) (same); Note, *Return to Hard Time: The Prison Litigation Reform Act of 1995*, 31 Ga. L. Rev. 879, 894 (1997) (same); Deborah Dekker, *Consent Decrees & the Prison Litigation Reform Act of 1995: Usurping Judicial Power or Quelling Judicial Micro-Management?*, 1997 Wisc. L. Rev. 1275, 1282 (same).

the reasons set forth in the next section, the statute need not be so construed because it suffers no constitutional infirmity.

## II. Section 3626(e)(2) does not violate separation-of-powers principles.

Section 3626(e)(2) complies with the Constitution. It neither legislatively suspends court orders nor mandates a rule of decision.

### *A. The PLRA does not unconstitutionally suspend a judicial order.*

Section 3626(e)(2) does not unconstitutionally legislatively suspend a judicial order. Rather, the law sets a time limit for the district court to rule on a party's motion in one type of case. It also prescribes consequences for the failure to act within that time, and these consequences act as an incentive for courts to rule promptly. The time limit and associated incentive are vital to accomplishing the legislative purpose of the PLRA, and they do not invade the primary function of the Judicial Branch – to decide cases.

The statutory time limit does not erase the district court's injunctive order. Rather, the statute simply deprives the order of its prospective effect until the district court rules on the motion to modify or terminate. 18 U.S.C. §3626(e)(2)(B). Only the district court's failure to act on a motion to modify or terminate the injunction within the time period prescribed by law causes the suspension. If prisoners meet the standard for continuing the injunction in §3626(b)(2) and (3), the injunction resumes its prospective effect when the district court denies the prison's motion to terminate. 18 U.S.C. §3626(e)(2)(B).

1. Section 3626(e)(2) does not violate separation-of-powers principles. Separation of powers does not



hermetically seal each branch from the others. *Mistretta v. United States*, 488 U.S. 361, 380 (1989). "The Framers did not require – and indeed rejected – the notion that the three Branches must be entirely separate and distinct." *Id.* Separation of powers does "not mean that these [three] departments ought to have no partial agency in, or no controul over the acts of each other," but rather "that where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution, are subverted." *The Federalist* No. 47, pp. 325-26 (J. Cooke ed. 1961) (Madison).

Indeed, one branch may place significant burdens on another without violating separation-of-powers principles. *Clinton v. Jones*, 520 U.S. 681, 701 (1997). Only when one branch's action disturbs the allocation of power among the branches does the action violate the constitutional plan. *Id.* "[O]ne branch may not intrude on the central prerogatives of another." *Loving v. United States*, 517 U.S. 748, 757 (1996).

The core power of the Judicial Branch is to decide cases. *Mistretta*, 488 U.S. at 389. For the Judicial Branch, separation of powers protects judicial independence and litigants' rights to adjudication by an independent judge. *Schor*, 478 U.S. at 848. But "bright-line rules cannot effectively be employed to yield broad principles applicable to all Article III [separation-of-powers] inquiries." *Schor*, 478 U.S. at 857.

2. Section 3626(e)(2) does not violate these separation-of-powers principles because it does not permit congressional intrusion into the core judicial function of deciding cases. While the statute places a time limit on judicial action and attaches consequences to failure to meet the time limit, it does not remove from the Judicial Branch the power to decide whether there are federal law violations

at prisons and to remedy any violations it finds. In the phrase of *Morrison v. Olson*, 487 U.S. 654, 695 (1988), §3626(e)(2) does not "impermissibly undermine" the judicial function. It represents neither aggrandizement of nor encroachment into the core judicial function. *See Schor*, 478 U.S. at 850 (separation of powers prevents Congress from aggrandizing judicial power and encroaching upon judicial function).

In concept, §3626(e)(2) is no different than the time limits on temporary restraining orders in Federal Rule of Civil Procedure 65(b) (federal court's TRO automatically expires after 10 days, with one possible 10-day extension, if court has not held a hearing with notice) and the five-day statutory limit on temporary restraining orders in the Norris-LaGuardia Act, 29 U.S.C. §107 ("Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days"). Each of these provisions mandates that a judicial order loses its prospective effect if the district court fails to act within a prescribed time period. Section 3626(e)(2) has precisely the same effect.

Section 3626(e)(2) also mirrors the automatic stay in bankruptcy, 11 U.S.C. § 362(a)(2). As with §3626(e)(2), the bankruptcy stay is created by statute, triggered by a litigant's action, and temporarily divests courts' judgments of their prospective effect ("a [bankruptcy] petition . . . operates as a stay, applicable to all entities, of . . . the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title"). The statute suspends enforcement of judgments against debtors, including judgments of Article III courts, absent permission by the bankruptcy court to enforce the judgment.

Section 3626(e)(2) also is consonant with the Court's other decisions permitting Congress to limit the lower courts'



jurisdiction, including placing limitations on remedies. *Hanna v. Plumer*, 380 U.S. 460, 472-73 (1965) (Congress may regulate judicial procedure); *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 329-30 (1938) (certain statutorily specified findings required before court may issue injunction in labor dispute); *Lockerty v. Phillips*, 319 U.S. 182, 187-88 (1943) (limiting jurisdiction over certain claims only to Emergency Court of Appeals); *California v. Grace Brethren Church*, 457 U.S. 393, 407-08, 411 (1982) (Tax Injunction Act precludes federal court jurisdiction to enjoin state taxes).

Taken together, these cases hold that Congress may limit federal courts' remedial authority, at least as long as litigants have *some* method to vindicate federal rights. While §3626(e)(2) automatically stays prison injunctions in some cases, it by no means precludes all prisoners' remedies. They may retain the injunction by proving a continuing federal violation under §3626(b)(3). If they are unable to obtain an injunction but later prove a federal violation, they may obtain damages. They also may seek mandamus under §3626(b)(1). Thus, they are not deprived of all remedies for potential constitutional violations.

Most commentators also agree that Congress has broad authority to limit federal court jurisdiction.[5] Even those who argue for limits on congressional power over court jurisdiction argue only that the Constitution requires *some* remedy – not all remedies or even ideal remedies – to be

---

[5] *E.g.*, Paul M. Bator, *Congressional Power Over the Jurisdiction of the Federal Courts*, 27 Vill. L. Rev. 1030 (1982); Gerald Gunther, *Congressional Power to Curtail Federal Court Jurisdiction: An Opinionated Guide to the Ongoing Debate*, 36 Stan. L. Rev. 895 (1984); Julian Velasco, *Congressional Control Over Federal Court Jurisdiction: A Defense of the Traditional View*, 46 Cath. U. L. Rev. 671 (1997).

available.[6] Section 3626(e)(2) leaves remedies available to prisoners, including injunctive relief under the PLRA's standards, damages, and mandamus.

3. The Seventh Circuit panel ruled incorrectly that §3626(e)(2) violates *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). *Plaut* invalidated a statute that sought to revive a set of securities fraud cases after this Court ruled that they were untimely under the applicable statute of limitations. *Plaut* addresses only statutes that act on final judgments in cases dismissed with prejudice, not statutes like §3626(e)(2) applying to active injunctions that continue to govern prison administration. Because the injunctions affected by §3626(e)(2) are not final judgments as defined in *Plaut*, the statute is not unconstitutional legislative review of a judgment. *See* 514 U.S. at 218 (applying *Hayburn's Case*, 2 Dall. 409 (1792)).

Rather, §3626(b)(2) requires judicial re-examination of ongoing prison conditions injunctions, mandating district courts to determine whether proper findings show that the injunctions meet the substantive standard for narrowness of the federal equitable order. And §3626(e)(2) is the mechanism for ensuring that judicial re-examination occurs in a timely manner. Neither section dictates the result to be reached under the legislatively specified standard.

As Congress intended, §3626(e)(2) gives prisoners strong incentives to quickly bring to the district court's

[6] *See, e.g.*, Henry M. Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 Harv. L. Rev. 1362, 1365-66 (1953); Laurence H. Tribe, *Jurisdictional Gerrymandering: Zoning Disfavored Rights out of the Federal Courts*, 16 Harv. C.R.-C.L. L. Rev. 129, 135-36 (1981); Lawrence Gene Sager, *Foreward: Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts*, 95 Harv. L. Rev. 1, 88 (1981).



attention any facts that will support continuation of the injunction. If no findings satisfying §3626(b)(2) are in place, prisoners must provide evidence satisfying the requirement of §3626(b)(3) that there is a current federal violation requiring injunctive relief to correct.

4. The statute's 30-day (or 90-day) time limit also does not operate in practice to effectively deny remedies to prisoners. *See Hadix*, 144 F.3d at 941 (suggesting potential practical problems with the time limits); Pet. App. 26-27 (same). When prison officials file a motion to terminate or modify, the district court's task consists of two steps. First, the district court must determine whether its injunction is supported by the findings specified in §3626(b)(2). This simple application of the statutory rule to the existing court order can be made within 30 days. *Cf. Watson v. Ray*, 192 F.3d 1153, 1157 (8th Cir. 1999) (concluding that earlier order did not contain findings); *Cagle v. Hutto*, 177 F.3d 253, 257 (4th Cir. 1999) (same). Second, if the injunction is not supported by those findings, the district court must terminate the injunction unless the prisoners can prove that the injunction must remain in place to prevent a violation of their federal rights.

Most importantly, in a prison already under an injunction governing conditions (as are all the prisons subject to §3626(e)(2)), the prisoners and their counsel should be aware of ongoing constitutional violations well before any motion to terminate or modify is filed. The prisoners should bring those unconstitutional conditions to the attention of the relevant court when they occur, not wait for a motion to modify or terminate. This practical reality undermines prisoners' complaints that the 90-day time period is insufficient for them to meet the standard in §3626(b).

If there is a serious, current violation of federal rights, the prisoners should be able to show the violation within the

30-day period, and certainly within the 90-day period. Several courts have terminated prison injunctions without the need for lengthy evidentiary presentations about current conditions. *E.g.*, *Cagle*, 177 F.3d 253 (no evidentiary hearing unless prisoners allege specific facts amounting to constitutional violation); *Watson*, 192 F.3d 1153 (termination proper absent evidence of current constitutional violation); *Harvey v. Schoen*, 51 F. Supp.2d 1001 (D.Minn. 1999); *Vasquez v. Carver*, 18 F. Supp.2d 503 (E.D.Pa. 1998), *aff'd*, 181 F.3d 85 (3d Cir. 1999); *Imprisoned Citizens Union v. Shapp*, 11 F. Supp.2d 586 (E.D.Pa. 1998); *Thompson v. Gomez*, 993 F. Supp. 749 (N.D. Cal. 1997). Thus, the Seventh Circuit's focus on the complexity of prison litigation is misplaced. Pet. App. 31. The point is not the length of the proceedings that led to the original injunction. Rather, the focus should be on the prisoners' ability to show an ongoing constitutional violation.

Similarly, §3626(e)(2) gives prison officials the incentive to move to modify or terminate only when they believe that the institution fully complies with constitutional standards. If they had real doubts whether constitutional standards were met, they would postpone motions to modify or terminate until they were confident that the prisoners would be unable to bring forward evidence of ongoing constitutional violations.

The deadline also gives prison officials strong incentives to cooperate with prisoners' discovery requests in connection with motions to modify or terminate. Prison officials know that their motions to modify or terminate will be much less likely to succeed if they are perceived as impeding prisoners' access to information or impeding the judicial process in any way. As Judge Easterbrook wrote, "Courts can foil delaying maneuvers by imposing sanctions on parties that fail to cooperate in discovery, see Fed. R. Civ. P. 37, and by drawing adverse inferences about missing



evidence." Pet. App. 38. Prison officials' incentives to cooperate in proceedings under §3626(b) therefore are strong.

Judge Easterbrook properly analyzed this part of the case under the Due Process Clause, not as a separation-of-powers problem. Pet. App. 37. The prisoners are not entitled to the benefit of their judgment in perpetuity (even under pre-PLRA law, *see Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992) (discussing standard for modification)), but the judgment cannot be effaced without notice and an opportunity to be heard. Section 3626(e)(2) provides those due process requirements. If the prisoners allege a continuing federal violation, the injunction covering prison conditions can be modified or terminated only after a hearing at which the prisoners have an opportunity to produce evidence satisfying the statutory standard for continuing the injunction. The injunction is terminated or permanently modified only if they cannot meet that standard.

The time limit in §3626(e)(2) thus is a constitutional exercise of legislative authority. Section 3626(e)(2) does not legislatively invalidate a judicial judgment. Rather, it sets a deadline for district courts to rule on specified motions, and it prescribes consequences if the courts fail to meet the deadlines. No judgment is eradicated by §3626(e)(2), although injunctions may temporarily lose prospective effect. Section 3626(e)(2) thus is a legitimate exercise of legislative power in an area in which Congress believed the federal courts were acting inappropriately. Because the statute does not violate separation-of-powers principles, the Seventh Circuit was wrong to invalidate the statute on that basis.

*B. Section 3626(e)(2) does not prescribe a rule of decision in a specific case.*

Section 3626(e)(2) also does not violate the prohibition against legislating a rule of decision in pending judicial cases other than by changing underlying law. *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871). *Klein* is an enigmatic, Reconstruction-era case involving both separation-of-powers principles and congressional attempts to alter the effects of presidential pardons, and it does not prohibit the kind of congressional action embodied in §3626(e)(2).

In *Klein*, suit was brought to recover private property sold by the United States during the Civil War. Proof that the property owner had not aided the rebellion was made by showing that he had received a presidential pardon. Congress then enacted a law providing that the receipt of the pardon was proof of disloyalty, rather than loyalty, and requiring courts to dismiss any appeal in a case in which the plaintiff had established his loyalty through a pardon. The Court held that the limitation on jurisdiction and alteration of the pardons' effect violated the Constitution. 80 U.S. (13 Wall.) at 146-48. The statute at issue in *Klein* did not change underlying law, but rather ascribed a particular evidentiary effect to a presidential pardon, at once modifying the effect of the pardon and requiring cases to be dismissed despite unchanged substantive law.

In contrast to *Klein*, in the PLRA Congress did not prescribe a rule of decision in pending cases. Rather, §3626(e) changed the procedure applicable to motions to terminate prison injunctions, a change that does not fall within the category of legislation prohibited by *Klein*. *See United States v. Sioux Nation of Indians*, 448 U.S. 371, 404 (1980) (distinguishing *Klein* and describing it as holding



unconstitutional statutes that mandate decisions in favor of the government in pending cases and vitiate the effect of pardons).

Section 3626(e)(2) is not an unconstitutional rule of decision under *Klein* because it is not a rule of decision at all. As explained in the previous section, it does not tell a court how to rule, it does not affect judicial jurisdiction, and it does not foreordain the result of the pending motion to modify or terminate the injunction. "[T]he PLRA automatic stay provision does not mandate a rule of decision." *Hadix*, 144 F.3d at 940.

Instead, it limits remedies in the absence of required findings that federal law is violated. Once 30 (or 90) days have passed after a motion to modify or terminate is filed, §3626(e)(2) suspends the prospective effect of an injunction until the district court applies the standard in §3626(b) to decide the pending motion. Section 3626(e)(2) is therefore procedural, and a district court can entirely avoid its effects by ruling on the prison officials' motion within the time prescribed by the law. At most, *Klein* limits withdrawal of federal jurisdiction; it does not address restrictions on remedies.[7]

The rule of decision to be applied in prison injunction cases comes not from §3626(e)(2), but rather from §3626(b), which changed the law of federal injunctive relief primarily

[7] Commentators have discounted *Klein*'s continuing significance. "Much that is said in the opinion is exaggerated if not dead wrong, and perhaps those infirmities, and the turbulence of the constitutional politics of the era, caution against seeking to draw too much from this single decision." Daniel J. Meltzer, *Congress, Courts, and Constitutional Remedies*, 86 Geo. L.J. 2537, 2549 (1998).

by adding the requirement of specific findings.[8] Section 3626(b) requires prison condition injunctions to be narrowly tailored, to address only violations of federal rights (not, for example, state-law-based rights or other matters to which the parties agree), and to extend no further than necessary to correct the federal violation; it also mandates specific findings that these substantive terms are met. But §3626(b) is neither the subject of this litigation nor in serious dispute, as it has been found to meet constitutional requirements by every circuit that has examined it.[9] *See also Robertson v. Seattle Audubon Soc.*, 503 U.S. 429, 440 (1992) (change in substantive law is constitutional even when designed to affect result in particular litigation).

In short, the potential prospective suspension of an injunction is not a "rule of decision," and it therefore does not violate *Klein*.

---

[8] The substantive standard in 18 U.S.C. §3626(b) is consistent with pre-PLRA law regarding judicial supervision of public institutions, although the statute imposes a requirement of specific findings that apparently goes beyond that in Fed. R. Civ. P. 52. Federal equitable remedies must be limited to correcting the injury found. *Lewis*, 518 U.S. at 357; *Bell*, 441 U.S. at 562 ("the inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the Constitution. . ."). Injunctions must account for state and local governmental interests in operating their own institutions. *Missouri v. Jenkins*, 515 U.S. 70, 88 (1995). And federal equitable relief must terminate when no longer necessary to protect a federal right. *Freeman v. Pitts*, 503 U.S. 467, 490 (1992).

[9] *Inmates of Suffolk Co. Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997); *Benjamin v. Jacobson*, 172 F.3d 144 (2d Cir. 1999) (*en banc*), *cert. denied*, 120 S.Ct. 72 (1999); *Imprisoned Citizens Union v. Ridge*, 169 F.3d 178 (3d Cir. 1999); *Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996), *cert. denied*, 520 U.S. 1277 (1997); *Hadix v. Johnson*, 133 F.3d 940 (6th Cir.), *cert. denied*, 118 S.Ct. 2368 (1998); *Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999); *Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997), *cert. denied*, 118 S.Ct. 2374 (1998); *Dougan v. Singletary*, 129 F.3d 1424 (11th Cir. 1997), *cert. denied*, 118 S.Ct. 2375 (1998).



## Conclusion

This Court should reverse the Seventh Circuit's judgment.

Respectfully submitted,

JEFFREY A. MODISETT
Attorney General of Indiana

JON LARAMORE
*Counsel of Record*

WAYNE E. UHL
GEOFFREY G. SLAUGHTER
Deputy Attorneys General

219 State House
Indianapolis, IN 46204
317-233-6582

Feb 3 2000

(6) (5)

Nos. 99-224, 99-582

Supreme Court, U.S.
FILED
FEB 3 2000
CLERK

# In the Supreme Court of the United States

JACK DUCKWORTH, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, ET AL., *Petitioners*,

v.

RICHARD A. FRENCH, ET AL., *Respondents*.

UNITED STATES OF AMERICA, *Petitioner*,

v.

RICHARD A. FRENCH, ET AL., *Respondents*.

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## BRIEF *AMICI CURIAE* OF WASHINGTON LEGAL FOUNDATION; UNITED STATES SENATOR SPENCER ABRAHAM; UNITED STATES REPRESENTATIVE TOM DeLAY; AND ALLIED EDUCATIONAL FOUNDATION IN SUPPORT OF PETITIONERS

PAUL D. CLEMENT
*Counsel of Record*
JEFFREY S. BUCHOLTZ
KING & SPALDING
1730 Pennsylvania Ave., N.W.
Washington, D.C. 20006-4706
(202) 737-0500

DANIEL J. POPEO
R. SHAWN GUNNARSON
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 588-0302

LEE LIBERMAN OTIS
SENATE JUDICIARY COMMITTEE
323 Dirksen Senate Office Bldg.
Washington, D.C. 20510
(202) 224-6098

February 3, 2000

## QUESTIONS PRESENTED

1. Whether the automatic stay provision of the Prison Litigation Reform Act, 18 U.S.C. § 3626(e), violates separation-of-powers principles by legislatively specifying a rule of decision or legislatively annulling a judgment.

2. Whether a district court has the authority to suspend the automatic stay under traditional equitable standards.

TABLE OF CONTENTS


Page

QUESTIONS PRESENTED ..... i

TABLE OF AUTHORITIES ..... v

INTEREST OF *AMICI CURIAE* ..... 1

SUMMARY OF ARGUMENT ..... 1

ARGUMENT ..... 3

I. THE PRISON LITIGATION REFORM ACT AND THE AUTOMATIC STAY ..... 3

A. Congress Enacted the Prison Litigation Reform Act to Restore Control of State Prisons to the States ..... 3

B. The Operation of the PLRA's Remedial Requirements ..... 4

II. SECTION 3626(e) MUST BE READ ACCORDING TO ITS PLAIN MEANING ..... 7

A. The Plain Language of the Automatic Stay Makes Clear That It Precludes any Equitable Discretion to Override the Stay ..... 7

B. The Justice Department's Canons of Construction Do Not Justify Ignoring the Plain Language of the Automatic Stay ..... 10

III. THE AUTOMATIC STAY DOES NOT VIOLATE THE SEPARATION OF POWERS ..... 13

A. Separation of Powers Principles Do Not Prevent Congress From

Placing Legislative Limits on the Federal Courts' Equitable Powers ..... 14

B. Nothing in This Court's Precedents Suggests that the Automatic Stay Provision Violates Separation of Powers Principles ..... 16

C. Nothing in the Penumbra of Article III Suggests that the Automatic Stay Provision Violates the Separation of Powers ..... 22

1. The Self-Executing Nature of the Automatic Stay Does Not Violate the Separation of Powers ..... 23

2. Federal Law Features Other Self-Executing Provisions with Far More Demanding Time Limits ..... 25

D. The Automatic Stay Does Not Violate the Separation of Powers Simply Because it Makes it More Difficult for Federal Courts to Supervise State and Local Prisons ..... 29

CONCLUSION ..... 30



## TABLE OF AUTHORITIES

Page

Cases:

*Aptheker v. Secretary of State*, 378 U.S. 500 (1964) ..... 11
*BellSouth Corp. v. F.C.C.*, 162 F.3d 678 (D.C. Cir. 1998) ..... 24
*Califano v. Yamasaki*, 442 U.S. 682 (1979) ..... 12
*California v. Grace Brethren Church*, 457 U.S. 393 (1982) ..... 15
*Caminetti v. United States*, 242 U.S. 470 (1917) ..... 10
*Celotex Corp. v. Oil, Chemical and Atomic Workers Int'l Union*, 516 F.2d 242 (3d Cir. 1975) ..... 26
*Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986) ..... 11
*Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998) ..... 11
*Imprisoned Citizens Union v. Ridge*, 169 F.3d 178 (3d Cir. 1999) ..... 16
*In re Dist. No. 1-Pacific Coast Dist., Marine Engineers' Beneficial Ass'n*, 723 F.2d 70 (D.C. Cir. 1983) ..... 26
*Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997) ..... 19
*Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994) ..... 18–19
*Lauf v. E.G. Shinner & Co.*, 303 U.S. 323 (1938) ..... 15
*Missouri v. Jenkins*, 515 U.S. 70 (1995) ..... 16
*Mistretta v. United States*, 488 U.S. 361 (1989) ..... 14–15
*Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. 518 (1851) ..... 17
*Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421 (1855) ..... *passim*
*Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) ..... *passim*
*Reno v. American-Arab Anti-Discrimination Committee*, 119 S. Ct. 936 (1999) ..... 15
*Robertson v. Seattle Audubon Soc.*, 503 U.S. 429 (1992) ..... 21

*Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) ..... 19
*SBC Commun., Inc. v. F.C.C.*, 154 F.3d 226 (5th Cir. 1998) ..... 24
*System Federation No. 91, Ry. Empl. Dept. v. Wright*, 364 U.S. 642 (1961) ..... 19
*Toledo, P. & W. R.R. v. Brotherhood of R.R. Trainmen, Enterprise Lodge No. 27*, 132 F.2d 265 (7th Cir. 1942) ..... 26
*Turner v. Safley*, 482 U.S. 78 (1987) ..... 16
*United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366 (1909) ..... 11
*United States v. Klein*, 80 U.S. 128 (1871) ..... *passim*
*United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989) ..... 10
*Walberg v. Israel*, 766 F.2d 1071 (7th Cir.) ..... 16

Constitutional Provisions, Statutes, and Rules:

18 U.S.C. § 3626(a)(1) ..... 5, 7
18 U.S.C. § 3626(a)(2) ..... 13
18 U.S.C. § 3626(b)(1) ..... 5, 8
18 U.S.C. § 3626(b)(2) ..... 5
18 U.S.C. § 3626(e) ..... 5, 10
18 U.S.C. § 3626(e)(1) ..... 6, 9
18 U.S.C. § 3626(e)(2) ..... 6, 9
18 U.S.C. § 3626(e)(2)(A)(i) ..... 12
18 U.S.C. § 3626(e)(3) ..... 8
18 U.S.C. § 3626(e)(4) ..... 6
28 U.S.C. § 455 ..... 15
29 U.S.C. § 107 ..... 25–26
Fed. R. Civ. P. 65(b) ..... 25–26, 28
Pub. L . No. 96-458, 94 Stat. 2035 (1980) ..... 15
Pub. L. No. 104-104, Tit. VI, § 601(a), 110 Stat. 143 (1996) ..... 20, 23
Pub. L. No. 104-134, § 802(b)(3), 110 Stat. 1321 (1996) ..... 1
U.S. Constitution, Article I, § 8 cl. 9 ..... 15
U.S. Constitution, Article III ..... *passim*



Other Materials:

WARREN, THE SUPREME COURT IN UNITED STATES HISTORY (1926) ..... 18
*Prison Reform: Enhancing the Effectiveness of Incarceration: Hearing on S. 3, S. 38, S. 400, S. 866, S. 930, and H.R. 667 Before the Senate Judiciary Comm.*, 104th Cong. (July 27, 1995) ..... 3–4
THE FEDERALIST (Jacob E. Cooke ed., 1961) ..... 14

## INTEREST OF *AMICI CURIAE*

The Washington Legal Foundation (WLF) is a nonprofit public interest law and policy center based in Washington, D.C., with supporters in all 50 States.[1] WLF regularly appears in legal proceedings before federal and state courts to defend and promote free enterprise and individual rights. WLF has appeared before this Court in cases involving prison litigation and the separation of powers *See, e.g., Lewis v. Casey*, 116 S. Ct. 2174 (1996); *Plaut v. Spendthrift Farm*, 514 U.S. 211 (1995).

The Congressional *amici* signing this brief include Members from both houses who are still in Congress and were leading sponsors of the relevant provisions of the Prison Litigation Reform Act or its predecessor legislation. They also include leading proponents of the 1997 amendments to that legislation.

The Allied Educational Foundation (AEF) is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, such as law and public policy, and has appeared as *amicus curiae* in this Court on several occasions.

*Amici* submit this brief in support of Petitioners and with the consent of all parties. Letters of consent have been filed with the Clerk of the Court.

## SUMMARY OF ARGUMENT

In 1996 Congress enacted the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321, 1366-77 (1996). The PLRA established a comprehensive system governing prospective relief

---

[1] No counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici curiae* and their counsel made a monetary contribution to the preparation and submission of this brief.

affecting prison conditions. Before a court may issue such an order, the PLRA requires it to find that a federal right has been violated and that the order is narrowly tailored to remedy that violation. To ensure that state and local prisons do not labor under orders that failed to meet these requirements, Congress included a number of procedural devices, including the automatic stay provision at issue here.

The automatic stay attempts to ensure that courts will measure decrees against the new, more demanding tests of the PLRA within 90 days of the filing of a motion to terminate. If the court does so, the automatic stay never comes into play. However, if the court takes longer than 90 days, the automatic stay lives up to its name—the court cannot extend the decree without making the findings required by the PLRA.

Despite the clear import of the automatic stay, the Justice Department urges this Court to accept a so-called saving construction. Under the Department's proposed construction, courts retain equitable discretion to continue a decree even after 90 days. This interpretation is at war with the plain text of the statute. Nonetheless, the Department suggests that the canons of construction that direct courts to avoid constitutional questions and restrictions on their equitable powers support its interpretation. But no canon licenses a court to rewrite a statute to deny a plain congressional intent to modify the courts' injunctive powers.

Perhaps the best reason to reject the Department's "saving construction" is that the automatic stay does not need saving. It is perfectly constitutional as written. Neither of the precedents relied on by the court below is to the contrary. While *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), forbids Congress from reopening final judgments at law, it



reaffirmed Congress' power to change the law prospectively to alter the force of existing injunctions. That is all the PLRA does. *Plaut* also clarified that *United States v. Klein*, 80 U.S. 128 (1871), is not implicated when Congress changes the underlying law. The PLRA not only changed the underlying law, but ensures that orders affecting state and local prisons reflect that change.

Nothing in the Constitution, this Court's precedents, or anything concealed in the penumbra of Article III casts doubt on the automatic stay. To the contrary, the automatic stay operates in the same fashion as other unquestioned provisions of federal law. None of this is to deny that the PLRA and the automatic stay make it less convenient for federal courts to issue injunctions governing state and local prisons. However, Congress determined that federal court supervision of state and local prisons raised tensions that justified these special procedures. Nothing in Article III or the separation of powers prevents Congress from making that judgment.

## ARGUMENT

### I. THE PRISON LITIGATION REFORM ACT AND THE AUTOMATIC STAY

#### A. Congress Enacted the Prison Litigation Reform Act to Restore Control of State Prisons to State Authorities

Congress enacted the PLRA to address a startling development. By October 1994, prison systems in 39 States, including 300 of the Nation's largest jails, operated under some form of federal court order. *See Prison Reform: Enhancing the Effectiveness of Incarceration: Hearing on S. 3, S. 38, S. 400, S. 866,*

*S. 930, and H.R. 667 Before the Senate Judiciary Committee*, 104th Cong. 84-85 (July 27, 1995).

Congress concluded that this extraordinary development violated precepts of federalism, separation of powers, and common sense. First, these federal orders govern state and local facilities whose function is to incarcerate criminals who have committed state and local crimes. Their operation lies at the heart of the States' police powers. Second, under our Constitution, the political branches decide how to administer prisons. Continuing judicial oversight of the details of prison administration takes judges far afield from their core Article III responsibilities. Finally, experience demonstrates that transferring management responsibility for state and local prisons to federal courts is not only constitutionally problematic; it is unwise. For example, in Philadelphia, a prison population cap imposed by one federal district judge led to the wholesale release of up to 600 criminal defendants a week who, in an 18-month period, committed nearly 10,000 new crimes. *Id.* at 46-53 (Testimony of Lynne Abraham).

Congress responded by enacting section 802 of the PLRA, Pub. L. No. 104-134, 110 Stat. 1321, 1366–68 (codified as 18 U.S.C. § 3626). Its sponsors sought to get federal courts out of the business of managing state and local prisons and to restore state and local control over these prisons, within the limits of federal law.

### B. The Operation of the PLRA's Remedial Requirements

The PLRA establishes a comprehensive scheme governing prospective relief affecting prison conditions. It changes the law concerning the



prerequisites for granting prospective relief, the scope of permissible relief, the presumptive permissible duration of that relief, and the requirements for maintaining prospective relief beyond that presumptive time period. It also establishes new procedures to implement these requirements.

The PLRA changes the governing law for granting prospective relief affecting prison conditions. To grant such relief, a court must find that the relief is necessary to correct a violation of the federal rights of specific prisoners. 18 U.S.C. § 3626(a)(1). In addition, any relief granted must be narrowly tailored to correct the violation and give due regard to the public safety.

If a court initially grants prospective relief without making these findings, a party may move to terminate that relief immediately. *Id.* at § 3626(b)(2). The court must grant that motion unless it determines that the relief is necessary to correct a current and ongoing violation of federal law, is narrowly tailored to remedy that violation, and gives due regard to public safety. *Id.* at § 3626(b)(3).

In addition, to prevent an order supported by the requisite findings from turning into a permanent transfer of authority over prison operations to a federal court, the PLRA allows a party to move to end or modify prospective relief after two years. *Id.* at § 3626(b)(1). The court must grant that motion unless it makes the requisite findings—that the relief remains necessary to correct a current and ongoing violation of a federal right, is narrowly tailored, and gives due regard to the public safety. *Id.* at § 3626(b)(3).

The PLRA also establishes three new procedural rules governing these motions to terminate prospective relief. First, § 3626(e) requires that the court rule promptly on a motion to terminate. A 1997

amendment added an express provision that if the court does not do so, mandamus lies to compel a ruling. *Id.* at § 3626(e)(1).

Second, § 3626(e) includes the automatic stay provision at issue here. The automatic stay provides that if the court does not rule within 30 days on a motion to terminate authorized by §§ 3626(b)(1) or (2), the motion will operate as a stay of the decree beginning 30 days after the motion is filed. *Id.* at § 3626(e)(2). The 1997 amendments added a provision permitting a court to postpone the beginning date of this stay for no more than 60 days beyond the initial 30 days for good cause. *Id.* at § 3626(e)(3). The stay ends as soon as the court rules on the motion to terminate. *Id.* at § 3626(e)(2).

As its name suggests, the stay does not wipe out the underlying order. The district court retains the power to lift the stay and preserve the underlying order simply by ruling on the motion. *Id.* Indeed, if the automatic stay provision has its desired effect and the court rules promptly on the motion to terminate, then the stay never comes into effect.

Finally, § 3626(e)(4) contains a special provision governing the appealability of orders blocking the automatic stay. As recounted in the BRIEF OF *AMICI CURIAE* THE ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS AND THE CITY OF NEW YORK, shortly after the PLRA's enactment, several district courts enjoined the automatic stay from taking effect on the ground that it was unconstitutional, and the courts of appeals would not entertain appeals from these orders. To avoid any uncertainty, Congress amended the PLRA in 1997 to make such orders immediately appealable.

The PLRA also clarifies that preliminary injunctions and TROs remain available. *Id.* at § 3626(a)(2). To obtain one, a party need not prove



the "violation of a federal right," but rather, simply show "harm ... requir[ing] preliminary injunctive relief." *Id.* Under this section, preliminary injunctive relief should be narrowly tailored to remedy the harm and courts should give substantial weight to public safety and principles of comity. Finally, the PLRA provides that such a preliminary injunction automatically expires 90 days after entry, unless, within that time, the court makes the findings required for final prospective relief under § 3626(a)(1).

## II. SECTION 3626(e) MUST BE READ ACCORDING TO ITS PLAIN MEANING

### A. The Plain Language of the Automatic Stay Makes Clear That It Precludes any Equitable Discretion to Override the Stay

The automatic stay provision limits the equitable discretion of federal courts to maintain the effect of a prospective order without testing it against the substantive provisions of the PLRA. If a court does not rule on a motion to terminate an order within 90 days, the automatic stay provision makes clear that the court lacks any discretion to keep the order in effect. Remarkably, however, the Justice Department maintains that the automatic stay provision does no such thing. In the Department's view, "the text of the automatic stay provision does not deprive a court of authority to suspend the automatic stay when justified by traditional equitable standards. Instead, it simply describes how the statute is to operate in the absence of judicial intervention." U.S. Pet. at 13–14.

The Justice Department's proposed construction flies in the face of the statute's text. The full text of the automatic stay reads as follows:

> (2) Automatic stay. —Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period—
>
> (A)(1) beginning on the 30th day after [a motion filed under §§ 3626(b)(1) or (b)(2)] is filed; ... and
>
> (B) ending on the date the court enters a final order ruling on the motion.

There is nothing ambiguous about this provision. First, the text directs that *any* (b)(1) or (b)(2) motion *shall* (not "may") operate as a stay. It then establishes a specific beginning point for the stay—30 days after the filing of the motion (unless the court rules on the underlying motion by that time)—and a specific ending point—the date on which the court rules on the underlying motion. *Id.* On their face, these provisions leave no room for a freestanding judicial order "staying the stay."

If this were not enough, a separate provision specifies one, and only one, method for delaying the stay: The court may enter a one-time postponement of the stay's effective date for "not more than 60 days" upon a showing of good cause. § 3626(e)(3). If Congress had meant to add the phrase "or for such longer period as the court deems necessary," it would have. But it did not.[2]

[2] The Justice Department's contention that the automatic stay provision "simply describes how the statute is to operate in the absence of judicial intervention," U.S. Pet. at 13–14, relies on the premise that the statute does not address what happens in the case (continued...)



Indeed, it is unthinkable that Congress would have added that language, because it would undermine the whole point of the automatic stay. It is likewise unthinkable that Congress would have given federal courts equitable discretion without specifying the standard to be applied, as the PLRA does everywhere else it authorizes courts to enter injunctive relief. Nonetheless, the Justice Department asks this Court to accept both of these unthinkable propositions.

Every other provision of subsection 3626(e) reinforces the plain meaning of the automatic stay. First, as a matter of context, Congress begins this subsection with a provision, § 3626(e)(1), that straightforwardly expresses its intent to end unnecessary federal supervision of state prisons and to do so *quickly*: "The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion."

In addition, in adding subsection (e)(4), Congress responded to decisions blocking the automatic stay as unconstitutional. Congress made clear that such orders were appealable "regardless of how the order is styled or whether the order is termed a preliminary or a final ruling." This provision reflects Congress' overriding interest in ensuring that courts promptly implement the terms of the PLRA—including the time limits of the automatic stay. The provision is inconsistent with the Department's contention that

[2] (...continued)
of judicial intervention, so courts can fill in the gap with their equitable discretion. But that is wrong. The statute expressly addresses what happens in the case of judicial intervention—the stay can be extended one time for not more than sixty days upon a showing of good cause.

those time limits are mere default rules applicable only in the absence of "judicial intervention."

As with all disputes over statutory interpretation, the inquiry here correctly "begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (citation omitted). "In this case it is also where the inquiry should end, for where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *Id.* (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)). The Justice Department's construction must be rejected because it is at war with the statutory text.

### B. The Justice Department's Canons of Construction Do Not Justify Ignoring the Plain Language of the Automatic Stay

Presumably recognizing the weakness of its proposed interpretation, the Justice Department falls back on two canons of construction. First, the Department justifies its rather remarkable interpretation of § 3626(e) based on "the principle that a statute should be construed to avoid a serious constitutional question, when such a construction is fairly possible." U.S. Pet. at 17. The Department argues that the Court should employ this principle to avoid a "serious separation-of-powers question," because, in its view, "the automatic stay can be fairly interpreted to permit a court to suspend the automatic stay in accordance with traditional equitable standards." *Id.* at 18 (footnote omitted).

We entirely disagree. The Justice Department would convert a provision designed to ensure prompt judicial consideration of motions to terminate into a provision further empowering courts to continue



existing orders indefinitely. The only thing automatically stayed under the Department's interpretation is Congress' intent.

To be sure, this Court avoids constitutional questions when it fairly can. "[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909). However, even this venerable principle has its limits. "'Although this Court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of perverting the purpose of a statute . . .' or judicially rewriting it." *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 841 (1986) (quoting *Aptheker v. Secretary of State*, 378 U.S. 500, 515 (1964)).

The Department's interpretation reads the automatic stay out of the statute and turns § 3626(e) into "a blank sheet of paper." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 216 (1995). Under its proffered construction, district courts would be bound by *no* fixed deadline in considering a motion for termination or modification of prospective relief, so long as they "judicially intervened." Although the Department's position was accepted by the Sixth Circuit in *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998), Judge Easterbrook's dismissal of it is as accurate as it is concise: "Congress set a deadline; *Hadix* turns it into mush." U.S. Pet. App. at 23a (Easterbrook, J., dissenting). Rules of constitutional avoidance do not permit courts to turn statutes into "mush."

The Department fares no better with its fallback rule of construction. It invokes a separate canon of

construction, which suggests that "'[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction.'" *Id.* at 13 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979)). The problem with this argument is that Congress expressed its intent in clear and unequivocal words. The whole point of the PLRA, in general, and the automatic stay provision, in particular, is to rein in the equitable power of the federal courts in an area of traditional state concern. A canon designed to avoid unintentional displacement of equitable authority has no place in interpreting this statute. Applying this canon to the PLRA and the automatic stay would be worse than unnuanced; it would flout the will of Congress.

Perhaps the most startling feature of the Justice Department's proposed "saving" construction is that it ignores other aspects of the PLRA that ameliorate any perceived constitutional difficulty with the automatic stay. Nothing in the automatic stay prevents a district court from entering a new preliminary injunction to prevent irreparable injury caused by a stay of the preexisting decree. The PLRA does limit all preliminary injunctions affecting prison conditions to 90 days. Nonetheless, this residual authority to issue preliminary injunctions allows a court to preserve the essence of an existing decree for up to 180 days following the filing of a motion for termination or modification.[3]

[3] Section 3626(e)(2)(A)(i), in effect, gives the court 30 days. Subsection (e)(3) allows the court to postpone the automatic stay for an additional 60 days on a showing of good cause for any reason other than "general congestion of the court's calendar." And subsection (a)(2) allows the court to enter a preliminary injunction, which is effective for an additional 90 days, bringing the total to 180 days from the date a motion for termination or modification

(continued...)



In light of the variety of deadlines under which federal officials regularly operate, 180 days surely constitutes a reasonable period in which to issue findings regarding a motion for termination or modification, even in the large and complex cases that typify prison reform litigation. *See* U.S. Pet. App. at 29a–30a (Easterbrook, J., dissenting). However, unlike the Justice Department's construction, this understanding of the PLRA furthers Congress' objective of ensuring that prospective injunctive relief is issued only pursuant to the standards of the PLRA. Unlike the loose equitable standard preferred by the Department, *see* U.S. Pet. at 12, the PLRA explicitly ensures that a court will grant a preliminary injunction only when it can make the findings required by the PLRA. § 3626(a)(2). These constraints ensure that a court has tools available to avoid injustice without evading the PLRA.[4]

## III. THE AUTOMATIC STAY DOES NOT VIOLATE THE SEPARATION OF POWERS

The plain text of the automatic stay provision requires federal courts to test the validity of

[3] (...continued)
is filed.

[4] An example may illustrate the key difference between the Department's construction of the statute and its operation as written. Suppose a long-standing consent decree has two provisions, one narrowly tailored to remedy an ongoing constitutional violation and the other guaranteeing a hot pot in every cell. If the existing decree is subject to the automatic stay, a prisoner would have little difficulty obtaining a preliminary injunction addressing the ongoing constitutional violation, but not one continuing the hot pot guarantee. This result complies with the intent underlying the PLRA. By contrast, applying general equitable principles, a court might well override the automatic stay and continue the consent decree without differentiating between the two provisions.

injunctive relief affecting prison conditions against the substantive law of the PLRA. As demonstrated, the Justice Department's proposed construction eviscerates the statute's plain meaning and should be rejected on that basis alone. However, this Court also should reject the Department's "saving" construction for the simple reason that the automatic stay does not need saving. The automatic stay involves a straightforward exercise of Congress' undoubted authority to legislate prospectively even though existing prospective decrees may be overturned as a result. Far from violating the separation of powers, the automatic stay promotes both the separation of powers and federalism by ensuring that federal courts oversee state and local prisons only where necessary.

### A. Separation of Powers Principles Do Not Prevent Congress From Placing Legislative Limits on the Federal Courts' Equitable Powers

The "separation of powers" provides a useful shorthand for the variety of constitutional principles and legal doctrines that address the division of power among the three branches of the federal government. However, the "separation of powers" is not a complete description of the system created by the founders. James Madison rejected the notion that the three "departments ought to have no partial agency in, or no controul over the acts of each other." THE FEDERALIST No. 47 at 325-26 (Jacob E. Cooke ed., 1961). As this Court has observed, the genius of the government the founders designed "lies not in a hermetic division among the branches, but in a carefully crafted system of checked and balanced power within each branch." *Mistretta v. United States*, 488 U.S. 361, 381 (1989). The events of last year, during which the Chief Justice presided over the Senate sitting as a court in the impeachment trial of the President prosecuted by managers from the House of Representatives, illustrates the truth of this observation.



While the Constitution prevents one branch from exercising power that belongs to another, it does not prevent a branch from exercising its authority in a way that affects the other branches. Article I authorizes Congress to "constitute tribunals inferior to the Supreme Court." Art. I, § 8 cl. 9. Congress can hardly exercise that authority without having a profound impact on the courts. Moreover, the Constitution vests Congress with the power to "make all laws necessary and proper for carrying into execution" not only its own enumerated powers, but also "all other powers vested by this Constitution in the government of the United States, or in any Department or Officer thereof." Art. I, § 8 cl. 18. Accordingly, Congress unquestionably can, and frequently does, exercise power over Article III courts not only by setting or changing the substantive law, but also by imposing procedural rules and jurisdictional limits, and even by prescribing standards of discipline and disqualification for Article III judges.[5] All these interactions between Congress and

---

[5] *See, e.g., Reno v. American-Arab Anti-Discrimination Committee*, 119 S. Ct. 936, 945-47 (1999); *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938) ("There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States."); *California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982); Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, P.L. 96-458, 94 Stat. 2035 (1980) (codified in various sections of Title 28 U.S.C.). Congress' authority to require disqualification of Article III judges for the mere appearance of bias, *see* 28 U.S.C. § 455, is undoubted, even though

(continued...)

the courts are a manifestation, not a violation, of the Constitution's system of separation of powers.

Accordingly, there is nothing inherently suspect about the PLRA or the automatic stay. To be sure, the PLRA changes the law prospectively and accordingly alters the prospective effect of existing orders, like the one at issue here. It further requires courts to revisit injunctions periodically to prevent state and local prisons from laboring under orders that do not comply with the PLRA. The automatic stay provision, moreover, helps to ensure that courts consider the continuing validity of such orders promptly. However, all this is perfectly consistent with the constitutional structure designed by the founders. Indeed, by helping extract the courts from the business of unnecessarily managing prisons—"'a task that has been committed to the responsibility of [the legislative and executive] branches'"—the PLRA "is not merely consistent with separation-of-powers principles; it furthers those principles." *Imprisoned Citizens Union v. Ridge*, 169 F.3d 178, 185 (3d Cir. 1999) (quoting *Turner v. Safley*, 482 U.S. 78, 84-85 (1987)); *see also Missouri v. Jenkins*, 515 U.S. 70, 134-35 (1995) (Thomas, J., concurring).

### B. Nothing in This Court's Precedents Suggests that the PLRA's Automatic Stay Provision Violates Separation of Powers Principles

The automatic stay provision fully complies with this Court's precedents. This Court addressed the limits of Congress' power to legislate concerning final

---

[5] (...continued)
the Constitution requires disqualification only for actual bias, *see, e.g., Walberg v. Israel*, 766 F.2d 1071, 1076-77 (7th Cir.), *cert. denied*, 474 U.S. 1013 (1985).



judgments and pending litigation in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), and *United States v. Klein*, 80 U.S. 128 (1871). The automatic stay provision avoids running afoul of the principles this Court laid down in *Plaut* and *Klein*.

The automatic stay provision does not implicate *Plaut* for the straightforward reason that the automatic stay does not attempt to overturn any final judgment at law, but rather places temporary limits on prospective relief. *Plaut* places final judgments beyond congressional control, but does not limit Congress' power to alter the prospective effect of injunctive relief. *Plaut* explicitly recognized this distinction, finding that congressional efforts to limit injunctive relief and cases upholding those congressional actions, such as *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421 (1855), "distinguish themselves." 514 U.S. at 232. The Court emphasized that "nothing in our holding today calls them into question." *Id.*

A contrary view—one that would impose limits on Congress' ability to affect prospective relief—would require overruling this Court's decision in *Wheeling Bridge*, not to mention invalidating key provisions of the Telecommunications Act of 1996. *Wheeling Bridge* rejected a challenge to an Act of Congress that negated an injunction entered by this Court in an earlier phase of the litigation. In its first *Wheeling Bridge* case, this Court declared the bridge over the Ohio River between Wheeling and Zane's Island to be an obstruction, and ordered the bridge to be elevated or removed. *See* 54 U.S. 518 (1851). In response, Congress enacted a statute declaring the bridge to be a lawful construction in its existing elevation. Despite Pennsylvania's argument "that the act of congress cannot have the effect and operation to annul the judgment of the court already

rendered," 59 U.S. at 431, the Court upheld the statute. The Court expressly distinguished the case of a final judgment in an action for damages. *Id.* As to prospective relief, however, the Court held that: "If, in the mean time, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced." 59 U.S. at 431-32.[6]

The distinction recognized in *Plaut* and *Wheeling Bridge* between laws seeking to alter final judgments at law and laws seeking to alter prospective injunctive relief is neither formalistic nor arbitrary. The distinction reflects the Article III concerns that animated this Court's decision in *Plaut*, and is firmly rooted in the primarily prospective nature of legislative power and the primarily retrospective nature of judicial power. *See, e.g., Landgraf v. USI*

[6] Nor can *Wheeling Bridge* be dismissed as an obscure case without broad implications for the separation of powers. The case generated substantial interest at the time as both a conflict between Congress and the courts and as part of the federal government's struggle to assert its authority over interstate commerce. *See* 2 WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 233-36 (1926). One journal at the time captured the importance of the issues in the original case, which led to the Court's order that the obstruction be removed: "Few cases ever excited greater interest or seemed to affect more extensively the internal commerce of the country than this celebrated controversy." Western L. J., IX (Sept. 1852), quoted in 2 WARREN, at 235. Another paper explained the controversy over Congress' reinstatement of the bridge: "This is the first instance in the whole history of the Government where Congress ever interposed or attempted to arrest a decree of the Supreme Court." New York Tribune (Feb. 19, 1856), quoted in 2 WARREN, at 236. That paper initially warned that "[t]he precedent may lead hereafter to serious embarrassments between the judicial and legislative departments," *id.*, but later conceded that the question had been settled "in conformity with the progressive spirit of the times." New York Tribune (April 23, 1856), quoted in 2 WARREN, at 236.



*Film Prods.*, 511 U.S. 244, 265-67 (1994). A final judgment at law (such as an award of damages) reflects the court's determination of the law and facts at a specific point in time. As the Court held in *Plaut*, a legislative decision that notwithstanding that judgment, the court should now reopen the case, cannot be understood as anything other than a legislative determination that the court was wrong as to the law or the facts at the specific time of the decision. *See Plaut*, 514 U.S. at 227-28. That amounts to a congressional effort either to exercise judicial review or to impose a different judgment, both of which clearly usurp the judicial power to decide cases.

That is not so where Congress seeks to have a different law applied to decide the future scope and duration of an injunction. To be justified, continuing injunctive relief requires the court to be correct as to the law and facts not just at the time of the initial judgment but at all future points in time. *See, e.g., Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649, 656-57 (1st Cir. 1997) ("The legitimacy of prospective equitable relief rests upon the presumed persistence of the conditions that originally justified the relief."), *cert. denied*, 118 S. Ct. 2366, *reh'g denied*, 119 S. Ct. 14 (1998).[7] No court ever purports to make a final determination as to the future state of the law and facts. Accordingly, Congress does not question the

[7] *See also Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 388 (1992) ("A consent decree must of course be modified if, as it later turns out, one or more of the obligations [it imposes] has become impermissible under federal law."); *System Federation No. 91, Ry. Empl. Dept. v. Wright*, 364 U.S. 642, 647 (1961) ("There is also no dispute but that a sound judicial discretion may call for modification of the terms of an injunctive decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen."); *id.* at 652 ("The parties have no power to require of the court continuing enforcement of rights the statute no longer gives.").

initial determination of law and facts (let alone violate any principle of separation of powers) by changing the law and thereby altering the prospective effect of an injunction.

*Wheeling Bridge* applied this logic and held that even though the legislation at issue targeted and overturned a single injunction, Congress did not intrude on the courts' Article III powers. *Plaut* reaffirmed that even such a narrowly targeted law is constitutionally valid.

In sum, the Court in *Wheeling Bridge* upheld an Act of Congress that displaced an injunction issued by this Court, even though the legislation addressed that bridge and only that bridge. The automatic stay provision, by contrast, does not single out one existing decree and does not overturn any decree, but rather imposes temporary limits on prospective relief. Invalidating the automatic stay provision would require overruling *Wheeling Bridge*. Indeed, such a ruling also would doom the provisions of the Telecommunications Act of 1996 that expressly terminated the prospective effect of the AT&T, GTE and McCaw injunctions.[8] However, there is no need to overrule *Wheeling Bridge* or cast doubt on the Telecommunications Act. This Court's precedents make clear that Congress does not run afoul of the separation of powers by changing the law and altering the prospective effect of injunctive relief.

No aspect of the automatic stay provision runs afoul of this Court's decision in *United States v. Klein*,

[8] *See* Pub. L. No. 104-104, Tit. VI, § 601(a), 110 Stat. 143 (1996) ("Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T [or GTE or McCaw] Consent Decree[s] shall, on and after such date, be subject to the restrictions and obligations imposed [by the 1996 Act] and shall not be subject to the restrictions and the obligations imposed by such Consent Decree[s].").



80 U.S. 128 (1871). Although there has been some doubt as to the exact contours of the holding in *Klein*, that issue need not trouble the Court here. As this Court explained in *Plaut*: "Whatever the precise scope of *Klein*, however, later decisions have made clear that its prohibition does not take hold when Congress 'amend[s] applicable law.'" 514 U.S. at 218 (quoting *Robertson v. Seattle Audubon Soc.*, 503 U.S. 429, 441 (1992)). *Klein* poses no obstacle here because the PLRA clearly "amends applicable law." Indeed, the *raison d'etre* of the automatic stay is to ensure that decrees affecting prison conditions—including pre-existing decrees—reflect the changes in the law that the PLRA worked. It is no coincidence that the Seventh Circuit's analysis discovering a *Klein* problem, *see* U.S. Pet. App. at 20a, omitted any reference to this critical passage from *Plaut*.

This passage underscores the critical but narrow limitation *Klein* places on Congress. The statute at issue in *Klein* reflected Congress' concern that the President was abusing the pardon power by granting clemency and restoring property to individuals who had provided material aid to the Confederacy. Congress lacked any power to place direct legislative limits on the President's exercise of the pardon. Accordingly, Congress attempted to achieve its goal indirectly by barring the introduction of the fact of pardons in litigation concerning property rights. The Court had little difficulty invalidating this congressional attempt to circumvent limitations on its ability to address the pardon power through legislation. The Court would not permit Congress to provide the rule of decision (by limiting the introduction of critical evidence) where Congress could not provide the rule of law through legislation. But nothing in *Klein* purports to limit Congress' ability to affect pending cases where Congress has the

authority to, and does in fact, change the law. Indeed, *Klein* distinguished *Wheeling Bridge* on this very ground. *See* 80 U.S. at 146–47. That is what this Court recognized in *Plaut* and that is all that the PLRA and the automatic stay accomplish.

The automatic stay provision is clearly constitutional under these principles. The automatic stay affects only the prospective effect of injunctions, and so falls clearly on the constitutional side of the *Plaut-Wheeling Bridge* divide. Moreover, the PLRA clearly changed the underlying law concerning the entry of injunctive relief affecting prison conditions, rendering *Klein* inapposite.

### C. Nothing in the Penumbra of Article III Suggests that the Automatic Stay Provision Violates the Separation of Powers

The automatic stay provision complies with this Court's precedents. Nonetheless, the court below found that the automatic stay violated principles never articulated by this Court. This Court should reject this effort to impose restrictions on Congress not required by the Constitution and its system of separation of powers.

In particular, the court below found the automatic stay unconstitutional because it amounted to "a self-executing legislative determination that a specific decree of a federal court ... must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place." U.S. Pet. App. at 19a. This principle has no support in the Constitution or this Court's cases. Indeed, if the "self-executing" nature of the stay dooms it, then other commonly-accepted provisions of federal law are doomed as well.



#### 1. *The Self-Executing Nature of the Automatic Stay Does Not Violate the Separation of Powers*

The self-executing character of the automatic stay does not transform it from a permissible regulation of procedure into a forbidden legislative suspension of a judgment. *Plaut* and *Wheeling Bridge* make clear that Congress does not violate the separation of powers by changing the law with the intent and effect of altering the validity of prospective relief. Congress can hardly run afoul of such principles if it connects the dots and makes the relationship between the change in the law and the effect on injunctions clear. That is all Congress did here. Congress changed the law, acknowledged that the change would affect pending injunctions, established procedures to ensure timely resolution of the continuing validity of prospective relief entered under the prior law, and set time lines limiting the effectiveness of decrees not reassessed under the new law. By making explicit that the change in the law affects pending injunctions and giving courts an opportunity to keep them in effect if they are justified under the new legal standard, Congress does not somehow transform normal prospective legislation into a separation of powers violation.[9]

---

[9] Congress' termination of the prospective effect of the consent decrees then in effect against AT&T, GTE, and McCaw even more explicitly foreclosed the possibility that the decrees could have continuing effect. *See* Pub. L. No. 104-104, Tit. VI, § 601(a), 110 Stat. 143 (1996) ("Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the [decrees] shall, on and after such date, be subject to the restrictions and obligations imposed [by the 1996 Act] and *shall not be subject to the restrictions and the obligations imposed by such Consent Decree[s].*") (emphasis added). Congress could have

(continued...)

Instead of enacting the PLRA, Congress could have followed the model of the law upheld in *Wheeling Bridge* and simply declared prison operations not found to have violated a federal right to be lawful. Alternatively, Congress could have followed the model of the Telecommunications Act and changed the law and declared that state and local prisons "shall not be subject to the restrictions and obligations imposed by" decrees not entered in accordance with the new laws. Either of these laws would be much closer to "a self-executing legislative determination that a specific decree of a federal court ... must be set aside" than either the PLRA's limitations on prospective relief as a whole or the automatic stay in particular. Instead of providing the court with 30 or 90 days to reassess the injunction and keep it in place if justified, these laws would immediately free a prison system from some or all of the prior decree's requirements *without any judicial intervention*.

Rather than enacting laws of this sort, Congress took the much more moderate approach of directing the courts to apply the new standards. It reinforced this directive with the automatic stay, but only after the courts have had a reasonable time to rule. Since these other truly self-executing forms of the PLRA would not run afoul of *Plaut*, the much less self-executing version Congress actually enacted, including the automatic stay, does not do so either.

---

[9] (...continued)
simply set out the new standards of the 1996 Act and left it to the courts to sort out the effect on existing consent decrees. The Courts of Appeals have had little difficulty concluding that, even though Congress instead chose to make its mandate clear by "connecting the dots," it did not thereby violate the separation of powers. *See BellSouth Corp. v. F.C.C.*, 162 F.3d 678, 692-93 (D.C. Cir. 1998), *cert. denied*, 119 S.Ct. 1495 (1999); *SBC Commun., Inc. v. F.C.C.*, 154 F.3d 226, 245-46 (5th Cir. 1998), *cert. denied*, 119 S.Ct. 889 (1999).



In sum, nothing in this Court's precedents limits Congress' ability to alter the prospective effect of pending injunctions when it simultaneously changes the law prospectively. To the contrary, this Court has recognized that this authority over pending injunctions is a necessary corollary of Congress' extensive power to legislate prospectively. Indeed, this Court has upheld this congressional power in circumstances that raised a far greater appearance of congressional meddling in the province of the judiciary. In *Wheeling Bridge*, this Court upheld Congress' effort to target a single injunction of this Court (not a lower court) and supersede it not with a new general standard, but with a legislative declaration limited to a single bridge. The PLRA, by contrast, changes the legal standard for granting injunctive relief in a whole class of cases without directing the outcome of any case. The PLRA raises far less difficulty under general principles than *Wheeling Bridge* and complies fully with the limits this Court laid down in *Plaut* and *Klein*.

### 2. *Federal Law Features Other Self-Executing Provisions with Far More Demanding Time Limits*

If (contrary to fact) the automatic stay violated the separation of powers because it is in some sense "self-executing," then other accepted provisions of federal law likewise would violate the Constitution. In particular, the self-executing time limits on TROs imposed by Fed. R. Civ. P. 65(b) and the Norris-LaGuardia Act, 29 U.S.C. § 107, place much more stringent time limits on prospective relief. Like the automatic stay, they suspend operation of a judicial order if additional findings are not made in a specified period of time.

Rule 65(b) allows a court to grant a TRO *ex parte* under certain circumstances. Under the rule, however, if the court takes no further action, the order expires in ten days. The court may extend the TRO, but only once, and only for an additional ten days. After that, if it wishes to maintain the effect of the order, it must enter a preliminary injunction, which requires the court to apply different, more demanding standards.

The Norris-LaGuardia Act's TRO provision operates the same way, but with an even more stringent time limit: five days with no extensions available. After five days, as with ordinary TROs, the court's only option is a preliminary injunction.[10] The Act also places special limits on preliminary injunctions in labor disputes. A court may not impose such relief until it has held a hearing, heard witness testimony in open court, and made detailed findings of fact. *See* 29 U.S.C. § 107(a)-(e).

The PLRA's automatic stay operates in similar fashion, although it provides courts with more time to act. Indeed, the specific problems the court of appeals assigned to the PLRA's automatic stay seem more likely to arise as a result of time limits on TROs. The court expressed concern that a defendant who wishes to obtain the benefit of an automatic stay need only stall discovery requests for 30 to 90 days

[10] In a 1942 decision not cited by the court below, the Seventh Circuit stated in dictum and without citation to authority that a district court may extend a TRO beyond the five-day limit set by § 107. *Toledo, P. & W. R.R. v. Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27*, 132 F.2d 265, 267 (7th Cir. 1942), *rev'd on other grounds*, 321 U.S. 50 (1944). This unsupported dictum has not been followed, and modern cases adhere to the plain terms of § 107. *See, e.g., In re Dist. No. 1-Pacific Coast Dist., Marine Engineers' Beneficial Ass'n*, 723 F.2d 70, 75 & n.3 (D.C. Cir. 1983); *Celotex Corp. v. Oil, Chemical and Atomic Workers Int'l Union*, 516 F.2d 242, 248 (3d Cir. 1975).



after making its motion to terminate. However, shorter time limits on TROs create an even greater risk. Nonetheless, this prospect troubles courts not at all because they have ample tools to deal with recalcitrant defendants. Nothing in the PLRA limits these tools.

The court of appeals expressed a related concern that a court might need more than 30 or even 90 days to resolve all the questions relevant to a motion to terminate.[11] This also fails to distinguish the TRO provisions. Undoubtedly, many issues relevant to the question whether to grant a preliminary injunction are difficult and time-consuming. Although a court might well desire more than the five- to 20-day life span of a TRO, it must make a determination within the deadlines.[12]

[11] The relative adequacy of five, 20, 30, 90, or 180 days seems like a more appropriate consideration for a Due Process analysis than for a separation of powers inquiry. *See* U.S. Pet. App. at 27a-28a (Easterbrook, J., dissenting). It may be that a five-day deadline is justified in the context of a TRO, but not for an automatic stay because the burdens on the party enjoined vary depending on the thoroughness of the initial proceeding imposing the injunction. But such balancing has no place in separation of powers analysis. Moreover, if five days is not sufficient, the result should be the same in state or federal court. At the extremes—requiring a stay absent a finding made in fifteen minutes or providing that judgments at law do not become final for twenty years— time limits may implicate the separation of powers, although even these extreme hypotheticals may be best analyzed under the Due Process Clauses. But absent such extreme hypotheticals, time limits properly belong in the due process calculus (which provides an antidote against absurd results), not in the separation of powers analysis.

[12] Indeed, in the context of prison litigation, the question whether to grant preliminary injunctive relief in the first instance likely will prove more complex and time-consuming than the question whether to retain a previously granted injunction, with which the court generally will be familiar. Nonetheless, Rule 65

(continued...)

The time pressures governing labor dispute TROs are even more demanding, and section 107 requires the court to make specific findings before imposing a preliminary injunction, just as the PLRA requires specific findings in order to issue or maintain a prison conditions decree. There is no reason to believe that the inquiry demanded by the Norris-LaGuardia Act is any easier for the court to conduct than the one mandated by the PLRA. Nonetheless, the PLRA gives the court 1800% of the time afforded by the Norris-LaGuardia Act. Judicial experience demonstrates that courts can meet the deadlines imposed by Rule 65(b) and the Norris-LaGuardia Act. Time will prove that the PLRA's burdens are substantially less onerous. They certainly are no less constitutional.

The court of appeals argued that the TRO provisions differ from the PLRA's automatic stay in two respects: 1) the TRO provisions respond to the particular problems of *ex parte* proceedings; and 2) district courts retain the ability to enter a preliminary injunction that preserves the status quo beyond the time allowed by the TROs. Both arguments miss the mark. The court's first point is not true as to the Norris-LaGuardia Act's time limit, and the second point betrays a misunderstanding of the PLRA.

First, section 107's time limit applies to *all* labor-dispute TROs, not only those entered *ex parte*. Second, the PLRA's automatic stay no more prevents the court from entering a preliminary injunction imposing effectively the same relief as the suspended decree than Rule 65 or the Norris-LaGuardia Act prevents the court from entering a preliminary injunction imposing the same relief as the TRO. As

---

[12] (...continued)
gives the court just 20 days to grant the preliminary injunction, while the PLRA provides a 90-day window to decide whether the retain the injunction.



noted earlier, nothing in the automatic stay provision prevents a court from entering a preliminary injunction to address a violation that is also subject to a stayed decree. To the contrary, the PLRA practically invites this course of action.

### D. The Automatic Stay Does Not Violate the Separation of Powers Simply Because it Makes it More Difficult for Federal Courts to Supervise State and Local Prisons

In the end, there is nothing in Article III or the separation of powers that prohibits Congress from changing the law in ways that require the termination of existing decrees or from requiring the courts to address the ramifications of that change promptly. Likewise, nothing prevents Congress from asking the courts to ensure that injunctive relief remains justified after the passage of time. If there are any limits on the extent to which Congress may accomplish these objectives, the PLRA does not violate them. Unlike the provision upheld in *Wheeling Bridge*, the PLRA affects an entire class of orders. Unlike the five-day time limit of the Norris-Laguardia Act, the PLRA gives courts 90 days to consider a motion to terminate.

This is not to say that the PLRA makes it convenient for federal courts to enter injunctive orders governing state and local prisons. To do so, the court must go out of its way to ensure that the order is narrowly tailored to address an actual violation of federal law. The court must then give priority in its docket over time to ensuring that the injunction remains fully justified. This is as Congress intended, and as it should be. Federal court supervision of state and local prisons puts unique strains on our system of federalism. The role of federal courts in overseeing these institutions is properly limited. The PLRA

balances the benefits of federal court intervention to protect federal rights with the costs of federal intervention in an area of traditional state concern. Nothing in Article III or the separation of powers prevents Congress from striking that balance.

## CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

Paul D. Clement
*Counsel of Record*
Jeffrey S. Bucholtz
King & Spalding
1730 Penn. Ave., N.W.
Washington, D.C. 20006
(202) 737-0500

Daniel J. Popeo
R. Shawn Gunnarson
Washington Legal Foundation
2009 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 588-0302

Lee Liberman Otis
Senate Judiciary Committee
323 Dirksen Senate Office Bldg
Washington, D.C. 20510
(202) 224-6098

Counsel for *Amici Curiae*

February 3, 2000

Feb 3 2000

Supreme Court, U.S.
FILED
FEB 3 2000
CLERK

Nos. 99-224 and 99-582

IN THE

# Supreme Court of the United States

CHARLES B. MILLER, Superintendent,
Pendleton Correctional Facility, et al., *Petitioners*,

*vs.*

RICHARD A. FRENCH, et al., *Respondents*,

--- AND ---

UNITED STATES, *Petitioner*,

*vs.*

RICHARD A. FRENCH, et al., *Respondents*.

**On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

KENT S. SCHEIDEGGER
CHARLES L. HOBSON
Attorney of Record
Criminal Justice Legal Fdn.
2131 L Street
Sacramento, CA 95816

Phone: (916) 446-0345
Fax: (916) 446-1194
E-mail: cjlf@cjlf.org

*Attorneys for Amicus Curiae Criminal Justice Legal Foundation*

4 cpp

## QUESTION PRESENTED

Does the Prison Litigation Reform Act's automatic stay provision, 18 U. S. C. § 3626(e)(2), violate the separation-of-powers doctrine?

## TABLE OF CONTENTS


Question presented ..... i

Table of authorities ..... v

Interest of *amicus curiae* ..... 1

Summary of facts and case ..... 2

Summary of argument ..... 3

Argument ..... 5

**I**

The PLRA's unambiguous language should not be ignored to avoid a nonexistent constitutional problem ..... 5

**II**

The separation-of-powers doctrine does not hermetically seal the three branches ..... 6

**III**

The PLRA's automatic stay provision is a procedural rule intended to check an excess of the Judiciary ..... 11

A. The problem ..... 11

B. The solution ..... 18

**IV**

Congress has neither assumed a judicial function nor interfered impermissibly with the Judiciary's constitutionally assigned function ..... 20

A. No rule of decision ..... 21

B. Law and retroactivity ..... 24

C. Schedules and judicial power ..... 28

Conclusion ..... 30

Appendix: 18 U. S. C. § 3626 ..... A-1



## TABLE OF AUTHORITIES

### Cases

Agostini v. Felton, 521 U. S. 203, 138 L. Ed. 2d 391, 117 S. Ct. 1997 (1997) ..... 19, 26

Almendarez-Torres v. United States, 523 U. S. 224, 140 L. Ed. 2d 350, 118 S. Ct. 1219 (1998) ..... 6

Aptheker v. Secretary of State, 378 U. S. 500, 12 L. Ed. 2d 992, 84 S. Ct. 1659 (1964) ..... 6

Bowsher v. Synar, 478 U. S. 714, 92 L. Ed. 2d 583, 106 S. Ct. 3181 (1986) ..... 7

Buckley v. Valeo, 424 U. S. 1, 46 L. Ed. 2d 659, 96 S. Ct. 612 (1976) ..... 7, 8

California v. Sierra Club, 451 U. S. 287, 68 L. Ed. 2d 101, 101 S. Ct. 1775 (1981) ..... 27

Carlisle v. United States, 517 U. S. 416, 134 L. Ed. 2d 613, 116 S. Ct. 1460 (1996) ..... 29

Casey v. Lewis, 43 F. 3d 1261 (CA9 1991) ..... 14

Celotex Corp. v. Edwards, 514 U. S. 300, 131 L. Ed. 2d 403, 115 S. Ct. 1493 (1995) ..... 29

Chapman v. California, 386 U. S. 18, 17 L. Ed. 2d 705, 87 S. Ct. 824 (1967) ..... 10

Commodity Futures Trading Comm'n v. Schor, 478 U. S. 833, 92 L. Ed. 2d 675, 106 S. Ct. 3245 (1986) ..... 6

Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council, 485 U. S. 568, 99 L. Ed. 2d 645, 108 S. Ct. 1392 (1988) ..... 6

Federal Election Comm'n v. National Conservative Political Action Comm., 470 U. S. 480, 84 L. Ed. 2d 455, 105 S. Ct. 1459 (1985) ..... 29

Fletcher v. Peck, 10 U. S. (6 Cranch) 87, 3 L. Ed. 162 (1810) ..... 9, 23

French v. Duckworth, 178 F. 3d 437 (CA7 1999) ..... 2, 3, 5, 6, 20, 26, 28

French v. Owens, 777 F. 2d 1250 (CA7 1985) ..... 2

Gavin v. Branstad, 122 F. 3d 1081 (CA8 1997) ..... 23

Hadix v. Johnson, 144 F. 3d 925 (CA6 1998) ..... 5, 23

Hanna v. Plumer, 380 U. S. 460, 14 L. Ed. 2d 8, 85 S. Ct. 1136 (1965) ..... 10

Heckler v. Edwards, 465 U. S. 870, 79 L. Ed. 2d 878, 104 S. Ct. 1532 (1984) ..... 30

Hook v. State of Arizona, 120 F. 3d 921 (CA9 1997) ..... 13,14

Hudson v. United States, 522 U. S. 93, 139 L. Ed. 2d 450, 118 S. Ct. 488 (1997) ..... 21

In re Blodgett, 502 U. S. 236, 116 L. Ed. 2d 669, 112 S. Ct. 674 (1992) ..... 18, 19

INS v. Chadha, 462 U. S. 919, 77 L. Ed. 2d 317, 103 S. Ct. 2764 (1983) ..... 7, 8, 9, 10, 20

Kotteakos v. United States, 328 U. S. 750, 90 L. Ed. 1557, 66 S. Ct. 1239 (1946) ..... 22

Lewis v. Casey, 518 U. S. 343, 135 L. Ed. 2d 606, 116 S. Ct. 2174 (1996) ..... 14

Loving v. United States, 517 U. S. 748, 135 L. Ed. 2d 36, 116 S. Ct. 1737 (1996) ..... 7



Miranda v. Arizona, 384 U. S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966) ..... 10

Mistretta v. United States, 488 U. S. 361, 102 L. Ed. 2d 714, 109 S. Ct. 647 (1989) ..... 7, 8, 9, 20

Morrison v. Olson, 487 U. S. 654, 101 L. Ed. 2d 569, 108 S. Ct. 2597 (1988) ..... 7

NAACP v. New York, 413 U. S. 345, 37 L. Ed. 2d 648, 93 S. Ct. 2591 (1973) ..... 29

O'Lone v. Estate of Shabazz, 482 U. S. 342, 96 L. Ed. 2d 282, 107 S. Ct. 2400 (1987) ..... 17

Pasadena City Bd. of Education v. Spangler, 427 U. S. 424, 49 L. Ed. 2d 599, 96 S. Ct. 2697 (1976) ..... 19, 25

Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U. S. (18 How.) 421, 15 L. Ed. 435 (1856) ..... 24, 25, 27

Plaut v. Spendthrift Farm, Inc., 514 U. S. 211, 131 L. Ed. 2d 328, 115 S. Ct. 1447 (1995) ..... 9, 10, 11, 20, 22, 24, 28

Preiser v. Rodriguez, 411 U. S. 475, 36 L. Ed. 2d 439, 93 S. Ct. 1827 (1973) ..... 17

Procunier v. Martinez, 416 U. S. 396, 40 L. Ed. 2d 224, 94 S. Ct. 1800 (1974) ..... 17

Robertson v. Seattle Audubon Soc., 503 U. S. 429, 118 L. Ed. 2d 73, 112 S. Ct. 1407 (1992) ..... 23

Rufo v. Inmates of Suffolk County Jail, 502 U. S. 367, 116 L. Ed. 2d 867, 112 S. Ct. 748 (1992) ..... 18, 26

Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Texas 1980) ... 15

Ruiz v. Johnson, 37 F. Supp. 2d 855 (S.D. Tex. 1999) ... 18

Sibbach v. Wilson & Co., 312 U. S. 1, 85 L. Ed. 479,
61 S. Ct. 422 (1941) ..... 10

System Federation v. Wright, 364 U. S. 642,
5 L. Ed. 2d 349, 81 S. Ct. 368 (1961) ..... 26, 28

United States v. Eichman, 496 U. S. 310,
110 L. Ed. 2d 287, 110 S. Ct. 2404 (1990) ..... 29

United States v. Klein, 80 U. S. (13 Wall.) 128,
20 L. Ed. 519 (1872) ..... 3, 10, 20, 21, 22, 23

United States v. Locke, 471 U. S. 84,
85 L. Ed. 2d 64, 105 S. Ct. 1785 (1985) ..... 29

United States v. Padelford, 76 U. S. (9 Wall.) 531,
19 L. Ed. 788 (1870) ..... 21

United States v. Salerno, 481 U. S. 739,
95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987) ..... 29

United States v. Sioux Nation of Indians, 448 U. S. 371,
65 L. Ed. 2d 844, 100 S. Ct. 2716 (1980) ..... 23

United States v. Swift & Co., 286 U. S. 106,
76 L. Ed. 999, 52 S. Ct. 460 (1932) ..... 26

Wright v. Rushen, 642 F. 2d 1129 (CA9 1981) ..... 17

Youngstown Sheet & Tube Co. v. Sawyer, 343 U. S. 579,
96 L. Ed. 1153, 72 S. Ct. 863 (1952) ..... 7, 8

**United States Statutes**

11 U. S. C. § 362 ..... 28

11 U. S. C. § 362(a) ..... 29

18 U. S. C. § 700(d)(2) ..... 29

18 U. S. C. § 3141(b)(c) ..... 29



18 U. S. C. § 3626(a)(1) ..... 2, 27

18 U. S. C. § 3626(a)(3)(F) ..... 15

18 U. S. C. § 3626(e)(2) ..... 2, 5, 6, 10

18 U. S. C. § 3626(e)(3) ..... 2, 5, 6

28 U. S. C. § 1341 ..... 27

28 U. S. C. § 2111 ..... 22

28 U. S. C. § 437(h)(a) ..... 29

42 U. S. C. § 1971(g) ..... 29

**Rule of Court**

Fed. R. Evid. 402 ..... 22

**Treatise**

R. Fallon, D. Meltzer, & D. Shapiro,
Hart & Wechsler's The Federal Courts and the
Federal System (4th ed. 1996) ..... 21

**Miscellaneous**

J. DiIulio, No Escape (1991) ..... 11

DiIulio, The Old Regime and the *Ruiz* Revolution:
The Impact of Judicial Intervention on Texas Prisons,
in Courts, Corrections, and the Constitution
(DiIulio ed. 1990) ..... 16

Feeley & Rubin, Judicial Policy Making and the
Modern State (1998) ..... 11, 12, 14, 16, 17

141 Cong. Rec. 26,554 (1995) ..... 17

Bleich, The Politics of Prison Crowding,
77 Cal. L. Rev. 1125 (1989) ..... 15

M. Boot, Out of Order (1998) ..... 12

Chilton & Talarico, Politics and Constitutional Interpretation in Prison Reform Litigation: The Case of *Guthrie* v. *Evans*, in Courts, Corrections, and the Constitution (DiIulio ed. 1990) ..... 13, 14

Cripe, Courts, Corrections and the Constitution: A Practitioner's View, in Courts, Corrections, and the Constitution (DiIulio ed. 1990) ..... 12, 16, 19

Decker, Consent Decrees and the Prison Litigation Reform Act of 1995: Usurping Judicial Power or Quelling Judicial Micro-Management, 1997 Wis. L. Rev. 1275 ..... 15, 27

DiIulio, Enhancing Judicial Capacity, in Courts, Corrections, and the Constitution (DiIulio ed. 1990) ... 11

Engel & Rothman, The Paradox of Prison Reform: Rehabilitation, Prisoner's Rights, and Violence, 7 Harv. J.L. & Pub. Pol'y 413 (1984) ..... 17

The Federalist (C. Rossiter ed. 1961) ..... 7, 8, 9, 10

Hagedorn, The Consequences of Federal District Court Intervention into Prisons and Jails: Philadelphia, Texas, and Arizona (Brookings Institution 1995) ..... 15, 16, 17

Scheidegger, Habeas Corpus, Relitigation, and the Legislative Power, 98 Colum. L. Rev. 888 (1998) .. 21, 22

Young, Congressional Regulation of Federal Courts' Jurisdiction and Processes: *United States* v. *Klein* Revisited, 1981 Wis. L. Rev. 1189 ..... 21

IN THE

# Supreme Court of the United States

---

CHARLES B. MILLER, Superintendent, Pendleton Correctional Facility, et al., *Petitioners*,

*vs.*

RICHARD A. FRENCH, et al., *Respondents*,

**--- AND ---**

UNITED STATES, *Petitioner*,

*vs.*

RICHARD A. FRENCH, et al., *Respondents*.

---

## BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

---

## INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

---

1. Rule 37.6 Statement: This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   All parties have given written consent to the filing of this brief.

The automatic stay component of the Prison Litigation Reform Act is an important part of Congress's effort to limit excessive judicial intrusion in prison management. The cost of compliance with court orders in these cases threatens the ability of states to continue the tough sentencing policies that have dramatically reduced crime and saved many innocent persons in recent years. The Seventh Circuit's decision to strike down the automatic stay is thus contrary to the interests CJLF was formed to protect.

## SUMMARY OF FACTS AND CASE

This case started over 20 years ago with prisoner-initiated, class action litigation over the conditions at what is now Pendleton Correctional Facility in Indiana. *French* v. *Duckworth*, 178 F. 3d 437, 438 (CA7 1999). The District Court found that the prison conditions violated both Indiana law and the United States Constitution. The remedy was a permanent injunction ordering "detailed changes" in prison conditions. *French* v. *Owens*, 777 F. 2d 1250, 1251 (CA7 1985). The Seventh Circuit affirmed much of the order. See *id.*, at 1258. The prison has been operating under this injunction ever since, subject to periodic modifications. 178 F. 3d, at 438.

The current round of litigation comes from Indiana's attempt to modify the injunction to conform to the new standards of the 1996 Prison Litigation Reform Act ("PLRA"). See 18 U. S. C. § 3626(a)(1). Under 18 U. S. C. § 3626(e)(2), the decree is automatically stayed if the District Court does not rule on the motion to modify within 30 days. Subdivision (e)(3) allows the court to postpone the automatic stay for up to 60 days "for good cause," other than a congested docket.

On June 5, 1997, Indiana filed a motion to terminate the decree. *French* v. *Duckworth*, *supra*, 178 F. 3d, at 440. On June 30, 1997, the prisoners responded with a motion asking the court to stay the automatic stay provision of § 3626(e)(2). *Id.*, at 440. The trial court granted the prisoners a Temporary Restraining Order ("TRO") on July 3, 1997, suspending the automatic stay provision. The court converted the TRO to a



preliminary injunction on July 11, 1997. Indiana appealed from that order.

The Seventh Circuit affirmed the preliminary injunction. The panel held that subdivision (e)(2)'s self-executing time limit was "an unconstitutional intrusion on the power of the courts to adjudicate cases." *Id.*, at 446. The Seventh Circuit further held that the automatic stay imposed a rule of decision on a pending case contrary to the holding of *United States* v. *Klein*, 80 U. S. (13 Wall.) 128 (1872). *French*, *supra*, 178 F. 3d, at 446-447.

The Seventh Circuit denied Indiana's motion for a rehearing en banc, with Judges Easterbrook, Posner, and Manion dissenting. See *id.*, at 448. On December 6, 1999, this Court granted Indiana's and the United States' certiorari petitions.

## SUMMARY OF ARGUMENT

The PLRA's automatic stay provision cannot be construed to give courts the discretion to ignore it. Its language is unambiguous, and the automatic stay is constitutional as written. This Court should decline the United States' invitation to rewrite the statute.

The separation-of-powers doctrine does not hermetically seal the three branches from each other. This doctrine, although designed primarily to protect against the tyrannical aggregation of power by one branch, also promotes a capable and accountable government. The founders reconciled these interests by separating the powers through the Constitution's system of checks and balances. The Constitution does not seal off the three branches, but creates a duty of interdependence between them.

In the relationship between Congress and the Judiciary, Congress is the generalist, creating broad rules of general application, while the Judiciary is the particularist, applying the given rules to specific cases. This leaves Congress with considerable power over the operation of the courts. The rules of evidence and the federal harmless error rule are examples of

congressional authority over a court's decisionmaking. Because the automatic stay neither impermissibly interferes with the Judiciary's function of deciding cases, nor assumes that function, it does not violate the separation of powers.

The PLRA is Congress's attempt to check the excesses of the federal Judiciary in prison civil rights litigation. Too many courts have used their equitable powers to remake and manage prisons in these cases. Judicial authority has been involved in every aspect of running a prison system, from the type of cleaner to be used to clean the prison to the design and construction of entire prisons. Every state and the federal government have had at least some prisons or jails under judicial control. The comprehensive usurpation of prison management by federal district court judges is a direct assault against both federalism and the separation of powers.

The automatic stay is an important part of Congress's solution to this constitutional problem. Federalism and the separation of powers are continuously violated so long as prison systems operate under decrees that exceed the constitutional minimums. The automatic stay places the federal courts on a schedule in order to promptly relieve penal institutions from the burden of improper judicial interference with their operations. Nothing in the Constitution prevents this rule of procedure.

The automatic stay does not violate *United States* v. *Klein*. *Klein* is an unusual case that has since been limited. This case now applies only when Congress tells a court how to decide a pending case without changing the underlying law. The automatic stay does not come under this holding. Courts still retain the authority to decide cases. The statute involves the rights and duties of the parties pending the decision. Furthermore, Congress can and has changed the underlying law, making the present case even more removed from *Klein*.

The statute in the present case neither retroactively reopens a final judgment, nor effects a review of an Article III court. A long line of cases starting with *Pennsylvania* v. *Wheeling & Belmont Bridge Co.* have held that a court's exercise of its injunctive power does not create a final judgment. In *Wheeling Bridge*, Congress was allowed to effectively overturn one of



this Court's decisions because an injunction is a continuing decree and therefore subject to subsequent changes in the law. From a separation-of-powers perspective, the PLRA's automatic stay is comparatively minor compared to what Congress was allowed to do in *Wheeling Bridge*. Because Congress can effectively terminate a continuing injunction, it surely may suspend one pending a determination of whether it is legal under current law.

Placing a court on a schedule through the mechanism of an automatic stay is consistent with the separation of powers. The Seventh Circuit's holding would strike down many congressional limits on the Judiciary's administrative independence, including the bankruptcy law's automatic stay. Congress has often set priorities for courts to rule on cases. The only difference is that now Congress has set a specific time limit. This distinction has no constitutional significance.

## ARGUMENT

### I. The PLRA's unambiguous language should not be ignored to avoid a nonexistent constitutional problem.

The United States argues that in order to avoid rendering the Prison Litigation Reform Act's (PLRA) automatic stay provision unconstitutional, courts must have the discretion to enjoin it from operating automatically. See *French* v. *Duckworth*, 178 F. 3d 437, 442 (CA7 1999); *Hadix* v. *Johnson*, 144 F. 3d 925, 936-937 (CA6 1998), rev'd on other grounds, *Martin* v. *Hadix*, 527 U. S. __, 144 L. Ed. 2d 347, 119 S. Ct. 1998 (1999). This is an unacceptable use of a statutory canon in circumstances where it is unnecessary. The statutory language cannot support this proposed interpretation. Furthermore, this argument is unnecessary as the automatic stay provision is constitutional as it is written. See Part IV, *post*.

The discussion of any interpretation of the PLRA's automatic stay begins and ends with the statutory language of 18 U. S. C. § 3626(e)(2)-(3). See Appendix.

The provision's heart is in one word in its first sentence: "Any motion to modify or terminate prospective relief under subsection (b) *shall* operate as a stay during the period . . . ." § 3626(e)(2) (emphasis added). This mandatory language unambiguously states that the stay is automatic. The only discretion given to the court is whether to delay the stay for "not more than 60 days" after finding good cause. The narrowness of subdivision (e)(3)'s exception undermines any alternative reading. If "good cause" only justifies a 60-day extension, Congress could not have meant to allow the court to take the "normal equitable considerations," *French*, *supra*, 178 F. 3d, at 442, into account before exercising its discretion to issue a longer stay.

"Shall" means "shall." It does not mean maybe. Although it is acceptable to interpret statutes to avoid "serious constitutional problems," see *e.g*, *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U. S. 568, 575 (1988), this is not a license to rewrite statutes. See *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833, 841 (1986). The canon of avoiding unconstitutional construction will not extend " 'to the point of perverting the purpose of a statute' . . . or judicially rewriting it." *Aptheker* v. *Secretary of State*, 378 U. S. 500, 515 (1964) (quoting *Scales* v. *United States*, 367 U. S. 203, 211 (1961)). This canon has two requirements, a "serious likelihood that the statute will be held unconstitutional," and "the statute must be genuinely susceptible to two constructions . . . ." *Almendarez-Torres* v. *United States*, 523 U. S. 224, 238 (1998). The United States' argument fails on both grounds.

## II. The separation-of-powers doctrine does not hermetically seal the three branches.

Before deciding whether the PLRA's automatic stay violates the doctrine of separation of powers, it is necessary to understand what this doctrine protects and why it does so. Fortunately, this Court and the founders have cleared a relatively straightforward path through the potentially confusing



thicket of the diverse interests and responsibilities of the three branches. Unfortunately, the Seventh Circuit strayed from this path, jumping into its discussion without a proper analysis of the rationale behind the separation-of-powers doctrine. Its opinion lacks the necessary understanding of the permissible interdependence among the three branches, sacrificing an act of Congress to an excessive protection of judicial prerogatives.

Congress, the Executive, and the Judiciary are separated primarily to protect against the threat to liberty posed by an excessive accumulation of power in one branch. Even before the Constitution's founding, separation of powers was a known bulwark against tyranny. See *Loving* v. *United States*, 517 U. S. 748, 756 (1996). The founders adopted this perspective. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The Federalist No. 47, p. 301 (C. Rossiter ed. 1961) (J. Madison). This principle is found throughout this Court's separation-of-powers decisions. See, *e.g.*, *Loving*, 517 U. S., at 756; *Mistretta* v. *United States*, 488 U. S. 361, 380 (1989); *Morrison* v. *Olson*, 487 U. S. 654, 685-696 (1988); *INS* v. *Chadha*, 462 U. S. 919, 950-951 (1983); *id.*, at 960-961 (Powell, J., concurring); *Bowsher* v. *Synar*, 478 U. S. 714, 721-722 (1986); *Buckley* v. *Valeo*, 424 U. S. 1, 121 (1976); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 635 (1952) (Jackson, J., concurring).

Separating the three branches does not only protect liberty; a lesser, but still important benefit is the enhanced operation of the government. "By allocating specific powers and responsibilities to a branch fitted to the task, the framers created a National Government that is both effective and accountable." *Loving*, *supra*, 517 U. S., at 757. By assigning each branch its own sphere of responsibilities, greater efficiency is achieved through the expertise that comes with experience. At the same time, the public knows which branch is responsible for any particular policy, ensuring accountability. See *id.*, at 757-758.

The Constitution's accommodation of liberty, effectiveness, and accountability is achieved through the means used to separate the three branches. It does not achieve these goals

through the absolute division of the three branches. "While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." *Youngstown*, *supra*, 343 U. S., at 635 (Jackson, J., concurring). A government that seals the three branches off from each other cannot function. As the framers understood, a "hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively." *Buckley*, *supra*, 424 U. S., at 121. Therefore, any separation-of-powers analysis must take a "pragmatic, flexible view of differentiated governmental power . . . ." *Mistretta*, *supra*, 488 U. S., at 381.

The Constitution maintains a balance of power between three interdependent branches. Therefore, "the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others." The Federalist No. 51, pp. 321-322 (C. Rossiter ed. 1961) (J. Madison). Liberty, efficiency, and accountability are thus simultaneously advanced by a "carefully crafted system of checked and balanced power within each Branch." *Mistretta*, *supra*, 488 U. S., at 381; see also *Buckley*, *supra*, 424 U. S., at 122 (the framers "built into the tripartite Federal Government . . . a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other"); *Chadha*, *supra*, 462 U. S., at 951.

Instead of forbidding any intermixing of powers, separation of powers actually requires the branches to exert some power in the others' spheres of influence.

> "Separation of powers, [Madison] wrote, 'd[oes] not mean that these [three] departments ought to have no *partial agency* in, or no *controul* over the acts of each other,' but rather 'that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution, are subverted.' " *Mistretta*, *supra*, 488 U. S., at 380-381 (quoting The Federalist No. 47, pp. 325-326 (J. Cooke ed. 1961) (J. Madison)) (emphasis in original; some brackets in original).



Therefore, "our constitutional system imposes upon the Branches a duty of overlapping responsibility, a duty of interdependence, as well as independence . . . ." *Id.*, at 381.

It is not enough to simply proclaim a separation-of-powers violation upon the mere finding that the act of one branch overlaps with the power of another. Instead, proper analysis looks to the nature and the extent of the alleged unconstitutional intrusion, looking to the respective powers, duties, and competencies of the respective branches. At the same time, the goals of the separation-of-powers doctrine, preserving liberty, while maintaining the government's effectiveness and accountability, must be kept in mind.

At an abstract level, separation of powers is violated in one of two ways. "One branch may interfere impermissibly with the other's performance of its constitutionally assigned function. Alternatively, the doctrine may be violated when one branch assumes a function that more properly is entrusted to the other." *Chadha*, *supra*, 462 U. S., at 963 (Powell, J., concurring) (citations omitted); see *Mistretta*, *supra*, 488 U. S., at 382.

Separation-of-powers analysis starts with the relative functions of the potentially conflicting branches. The spheres of influence of Congress and the Judiciary are explained in The Federalist. Congress has the authority to "prescrib[e] the rules by which the duties and rights of every citizen are to be regulated" while "[t]he interpretation of the laws is the proper and peculiar province of the courts." The Federalist No. 78, pp. 465-467 (C. Rossiter ed. 1961) (A. Hamilton); see *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 222 (1995). In practice, Congress is the generalist, prescribing the general rules to regulate society and the legal system, while the courts are the particularists, applying these given rules to the specific cases. "It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments." *Fletcher* v. *Peck*, 10 U. S. (6 Cranch) 87,

136 (1810) (Marshall, C.J.); see *Plaut*, 514 U. S., at 241-242 (Breyer, J., concurring).

This still leaves Congress with considerable authority over the Judiciary. Congress has broad authority to enact procedural rules. See, *e.g.*, *Hanna* v. *Plumer*, 380 U. S. 460, 472 (1965); *Sibbach* v. *Wilson & Co.*, 312 U. S. 1, 9 (1941). Congressional authority extends very far into both what a court decides and how it reaches its decision. For example, this Court has invited Congress to formulate its own rules to replace its judicially created Fifth Amendment prophylactic, see *Miranda* v. *Arizona*, 384 U. S. 436, 467 (1966), and to provide it with a rule for defining harmless constitutional error. *Chapman* v. *California*, 386 U. S. 18, 21 (1967). So long as Congress does not "prescribe the rules of decision to the judicial Department of a case pending before it," *United States* v. *Klein*, 80 U. S. (13 Wall.) 128, 146 (1872), place review of an Article III court's decision in officials of another branch, or command the courts to retroactively reopen final judgments, it is not likely to unconstitutionally intrude upon the Judiciary. See *Plaut*, *supra*, 514 U. S., at 218.

A proper analysis of 18 U. S. C. § 3626(e)(2) takes these principles into account. *Amicus* submits that the PLRA's automatic stay is a rule that neither assumes a judicial function nor "interfere[s] impermissibly" with the Judiciary. See *Chadha*, *supra*, 462 U. S., at 963 (Powell, J., concurring). This rule does not decide any specific case, and it does not effect a review of an Article III court. It is no more than a mechanism to ensure the expeditious review of some of the longest and most invasive cases in American jurisprudence after Congress changed the law underlying the courts' power to issue injunctive relief in prison cases. Congress has only exerted the partial authority over the courts that is both its duty and its due. See The Federalist No. 47, pp. 302-303 (C. Rossiter ed. 1961) (J. Madison).



## III. The PLRA's automatic stay provision is a procedural rule intended to check an excess of the Judiciary.

The Seventh Circuit's analysis of the automatic stay is 180 degrees off course. This provision advances both federalism and the separation of powers. Too many prisoner civil rights cases have degenerated into judicial micromanagement of penal institutions through continuing injunctions or consent decrees. These court orders give prisoners far more relief than the Constitution requires. The automatic stay therefore strikes a blow for the separation of powers and the equally important principle of federalism, by freeing federal and state prisons from the excesses of some Article III courts. Although the motive behind the policy is not relevant to the separation-of-powers issues, see *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 228 (1995), a statute's effect is. Any analysis of the automatic stay must take into account the fact that it promotes these important constitutional policies by providing the necessary check on the courts. See Part II, *supra*.

### *A. The Problem.*

The PLRA is Congress's response to one of the greatest sustained intrusions into federalism and the separation of powers by the federal Judiciary. Traditionally, courts did not interfere with the management of prisons. See J. DiIulio, No Escape 148 (1991) (cited below as "No Escape"). The balance of power between the federal courts and the prisons changed dramatically in the mid-60's and early 70's, as federal district courts entertained prisoner-initiated suits over prison conditions. See M. Feeley & E. Rubin, Judicial Policy Making and the Modern State 39-40 (1998); No Escape, *supra*, at 148. What began with a trickle soon became a torrent, with a "dramatic proliferation of prison decisions." Feeley & Rubin, *supra*, at 39. These cases typically involved courts refashioning prisons or jails after finding that the totality of the conditions violated the Constitution. See DiIulio, Enhancing Judicial Capacity, in Courts, Corrections, and the Constitution 4 (J. DiIulio ed. 1990).

The breadth of federal judicial involvement in the correctional system is startling. Forty-one states have had prisons

under comprehensive court orders. All 50 states have had jails under court orders and 10 states have had their entire prison systems under judicial interdiction. See Feeley & Rubin, *supra*, at 13 (footnotes omitted).

Not all district courts approach prison litigation in this manner. Some judges did not take an activist approach to prison litigation, keeping their rulings narrow, and often in the government's favor. See Cripe, Courts, Corrections, and the Constitution: A Practitioner's View, in Courts, Corrections, and the Constitution, *supra*, at 270-271. Unfortunately, too many district court judges were not so restrained. These courts would render decisions covering entire prisons or even prison systems. This level of intervention would often be justified by finding that the conditions of the prison as a whole was a "shock to the conscience" and thus violated the Eighth Amendment's prohibition of cruel and unusual punishment. See *id.*, at 271-272.

The level of judicial intervention in these cases is breathtaking, in both its extent and detail. A 52-page consent decree concerning the New York City jails signed by Mayor Ed Koch eventually "spawned more than 1,500 pages of court orders . . . ." M. Boot, Out of Order 138 (1998). The ensuing micromanagement is too typical.

> "For starters, the order guaranteed every inmate *free* access every day to newspapers, telephones, and television sets. But it went much further than that. The 'Sanitation Order' prescribed that certain areas of the jails must be cleaned with a particular type of detergent, Boraxo, in a specified strength (half a cup per gallon of water). New York faced fines if it didn't follow this order's 'floor care procedures'—for instance, if prison janitors failed to stay six inches away from baseboards and corners when applying the first two coats of floor finish." *Ibid.* (emphasis in original).

The case of *Guthrie* v. *Evans* shows how a suit from a handful of inmates can turn into a judicially-mandated transformation of a prison. What started as an *in forma pauperis* complaint by 51 black inmates in the Georgia State Prison at



Reidsville turned into one of the most detailed judicial interventions into the administration of a prison. Chilton & Talarico, Politics and Constitutional Interpretation in Prison Reform Litigation: The Case of *Guthrie* v. *Evans*, in Courts, Corrections, and the Constitution, *supra*, at 117. The "extensive changes . . . covered everything from racial discrimination to the right to retain up to six issues of monthly magazines for up to six months." *Ibid.* The litigation lasted from 1972 to 1985, involving over two hundred witnesses before a special master and "nonprocedural orders and consent decrees . . . too numerous to itemize." See *id.*, at 118-119. A special monitor was appointed to implement the numerous orders and decrees, and was given "broad powers beyond mere oversight of decree implementation and acted as fact-finder, mediator, manager, and planner." *Id.*, at 119. His fees exceeded the salary of Georgia's governor. The litigation was so long and so grueling that it drove personnel out of the prison, see *id.*, at 125, and caused the parties' positions to change as key personnel entered and left this seemingly endless case. See *id.*, at 124-125.

Judicial management of prisons is not limited to Eighth Amendment cases. A 1973 complaint filed by Arizona prisoners alleged that prison mail policies violated their First Amendment rights. This right was alleged to include the "constitutional right to subscribe to certain magazines, including *Playboy* and *Bachelor Beat* . . . ." *Hook* v. *State of Arizona*, 120 F. 3d 921, 923 (CA9 1997). In response, the state proposed a consent decree, accepted by the prisoners and the court, which promulgated comprehensive mail regulations, including a right for prisoners "to receive three twenty-five pound packages between December 10th and 31st of each year." *Ibid.* The Department of Corrections moved to modify the decree in October 1992. *Ibid.* After settlement negotiations broke down, Judge Carl A. Muecke denied the motion, while granting the prisoners' motion "to change the title of the list of people authorized to send holiday packages, and to permit inmates to possess and use hot pots in their cells to heat and cook items." *Ibid.*

Fortunately, the Ninth Circuit reversed in this case. It found that the considerable expense and security risk posed by the

nearly 25,000 packages a year justified modifying the order. See *id.*, at 924-925. Unsurprisingly, the court also found that the Constitution does not confer upon inmates a right to a hot pot in their cells. *Id.*, at 925. A concurring judge noted that Judge Muecke "entangled [himself] in the administration of the Arizona penal institutions," a role the District Court should "severely limit." *Id.*, at 927 (Beezer, J., concurring).

The Ninth Circuit has not always supervised Judge Muecke adequately. In *Casey* v. *Lewis*, 43 F. 3d 1261 (CA9 1991), the Ninth Circuit largely affirmed the bulk of Judge Muecke's detailed reordering of Arizona's prison library system in the name of protecting their right of access to the courts. See *id.*, at 1266. This

> "order specified in minute detail the times that libraries were to be kept open, the number of hours of library use to which each inmate was entitled (10 per week), the minimal educational requirements for prison librarians (a library science degree, law degree, or paralegal degree), the content of a videotaped legal-research course for inmates (to be prepared by persons appointed by the special master but funded by ADOC), and similar matters." *Lewis* v. *Casey*, 518 U. S. 343, 347 (1996).

This Court struck down the order because the prisoners had suffered no actual injury to their right of access. *Ibid.*

These are not isolated cases. "Rather, the prison cases constitute a rapid, inexorable procession of discrete decisions formulated by federal trial courts throughout the nation and affirmed repeatedly at the appellate level." Feeley & Rubin, *supra*, at 19. "The Constitution charges federal judges with deciding cases and controversies, not with running state prisons. Yet, too frequently federal district courts in the name of the Constitution effect wholesale takeovers of state correctional facilities and run them by judicial decree." *Lewis*, *supra*, 518 U. S., at 364 (Thomas, J., concurring). These cases often do not make it to the appellate level, as the prison authorities decline to appeal in exchange for concessions from the District Court. See, *e.g.*, Chilton & Talarico, *supra*, at 130 (describing purported negotiations between the Governor of Georgia and the District Court in the *Guthrie* case).



Consent decrees pose particular problems in prison litigation. Although the consent of the prison officials to the final order would seem to deflect criticism of judicial management of prisons, the consent is often not what it seems. Prison officials confronted with a hostile District Court, the threat of personal liability, and with an uncertain, expensive, and lengthy appeal as the only alternative, can find a consent decree the least bad option. See Decker, Consent Decrees and the Prison Litigation Reform Act of 1995: Usurping Judicial Power or Quelling Judicial Micro-Management, 1997 Wis. L. Rev. 1275, 1278. Furthermore, consent decrees are a wonderful aid to bureaucratic empire building. The new facilities, vast increases in funding, and more staff associated with comprehensive prison decrees can persuade prison officials to put up with the indignity of judicial micromanagement of their institutions. See Bleich, The Politics of Prison Crowding, 77 Cal. L. Rev. 1125, 1156-1158 (1989); Hagedorn, The Consequences of Federal District Court Intervention into Prisons and Jails: Philadelphia, Texas, and Arizona 34-35 (Brookings Institution 1995). Because "[p]rison litigation makes it easier for administrators to obtain additional funding," Bleich, 77 Cal. L. Rev., at 1157, any consent decree that substantially raises prison funding is suspect. Congress recognized the separation-of-powers implications of this interference with the state budgeting process and expressly gave legislators standing to challenge certain orders. See 18 U. S. C. § 3626(a)(3)(F).

A consequence of this immense expansion of federal judicial power is that many prisons and jails are now subject to detailed court orders that go beyond the scope of what the Constitution requires. There is no constitutional mandate for the type of cleaner to be used in cleaning the prison, see *supra*, at 12, or the size, location, and design of prisons. See *Ruiz* v. *Estelle*, 503 F. Supp. 1265, 1388-1389 (S.D. Tex. 1980).

> This is not judicial review, it is judicial management.
>
> "In the process of defining and imposing standards, courts undertook the management and micromanagement of these

institutions. The appointment of special masters, working full-time in the prisons and answerable directly to the court, was only the most dramatic manifestation of this general trend. Even when courts acted without appointing subordinate officials, they maintained an ongoing, detailed supervision of the institution that diverges from our traditional image of judicial action and judicial standard-setting." Feeley & Rubin, *supra*, at 18.

It is unacceptable, both as a matter of public policy and constitutional law, for courts to involve themselves so deeply in our penal institutions. Judges lack the training, resources, and perspective to manage prisons. While judges are generally quite capable of applying the law to resolve disputes between the parties, they are often poor managers. See Cripe, in Courts, Corrections, and the Constitution, *supra*, at 274. There are many examples of unintended, but disastrous consequences of the judicial management of prisons. Inflexible and improperly designed population caps in Philadelphia created an effective "get out of jail free card" for many of its criminals, devastating the city. See Hagedorn, *supra*, at 2-7. Because certain crimes could not be punished by imprisonment, these laws were unenforceable. Thus, drug dealers migrated to Philadelphia from other cities because " '[t]he town's wide open.' " *Id.*, at 6. Eventually, "there were instances where individuals were being arrested who had ten or more bench warrants and were saying things like 'You can't hold me, the caps on tonight.' " *Id.*, at 3.

The *Ruiz* litigation provides a particularly infamous and well-documented example of the dangers of judicial prison management. This case transformed a controversial, but safe and well-run system into an expensive nightmare for the inmates and staff. See DiIulio, The Old Regime and the *Ruiz* Revolution: The Impact of Judicial Intervention on Texas Prisons, in Courts, Corrections, and the Constitution, *supra*, at 53-53, 69-70; Hagedorn, *supra*, at 12-14. Courts do not have to actively mismanage prisons for their intervention to harm the institution. In *Ruiz*, the suit itself, and Judge Justice's reputation for sympathy to prisoner claims, led to a breakdown of discipline as inmates exploited the shift in the balance of power



between themselves and the administration. See *id.*, at 15. Litigation also intimidates guards, making them wary that disciplining inmates will lead to personal liability. See Engel & Rothman, The Paradox of Prison Reform: Rehabilitation, Prisoner's Rights, and Violence, 7 Harv. J.L. & Pub. Pol'y 413, 431 (1984). Continuing judicial management risks an endless degradation of the administration's authority.

This is an affront to both federalism and the separation of powers. "It is difficult to imagine an activity in which a state has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Preiser* v. *Rodriguez*, 411 U. S. 475, 491-492 (1973). Judges should not make prison policy, but instead must defer to the prison administration's evaluation of penological objectives. See *O'Lone* v. *Estate of Shabazz*, 482 U. S. 342, 349-350 (1987). Courts, which lack both the knowledge and resources to administer prisons, are better suited to safeguarding basic principles; the details of prison life are better left to the executive and legislative branches. See *Procunier* v. *Martinez*, 416 U. S. 396, 404-405 (1974). Any remedy must therefore be narrowly tailored to what the Constitution minimally requires. A court "may not use the totality of all conditions to justify federal intervention requiring remedies more extensive than are required to correct Eighth Amendment violations." *Wright* v. *Rushen*, 642 F. 2d 1129, 1133 (CA9 1981). As two proponents of judicial intervention admit, "the prison reform cases . . . violated nearly every accepted principle for controlling the judicial branch." Feeley & Rubin, *supra*, at 18. The authors did not conclude that the courts were wrong, however, but rather that "there is something seriously wrong" with "federalism, separation of powers, and the rule of law . . . ." *Id.*, at 20.

This Court knows better, see Part II, *supra*, as does Congress. The PLRA is Congress's effort to correct the excesses of the federal courts in prison litigation. As Senator Abraham said during the debate over the PLRA, "judicial orders entered under federal law have effectively turned control of the prison system away from elected officials accountable to the taxpayer, and over to the courts." 141 Cong. Rec. 26,554 (1995). The PLRA

is Congress's exercise of its constitutional obligation to check another branch. The automatic stay provision is an important component of this policy and any analysis of its constitutionality must take this into account.

*B. The Solution.*

The PLRA seeks to restore the balance between the Judiciary, on one hand, and the States, Congress, and the Executive, on the other, by placing strict limits on the federal courts' power to issue injunctive relief in prison cases, and applying these limits to existing court orders. This later portion is particularly important since many prisons and jails are still operating under longstanding judicial decrees. See *supra*, at 14. The automatic stay is a necessary component for liberating the penal system from unnecessarily broad court orders.

If there is one constant in prison litigation, it is the length of the major cases. Any attempt to remake a prison system is going to take a long time. The *Ruiz* case started with a complaint filed in 1972, while the District Court's decision was not issued until 1980 after an "epic trial." *Ruiz* v. *Johnson*, 37 F. Supp. 2d 855, 860 (S.D. Tex. 1999). This Court has addressed a prison reform case that entailed similarly epic litigation, with numerous court orders and appeals snaking through the federal courts for over 20 years. See *Rufo* v. *Inmates of Suffolk County Jail*, 502 U. S. 367, 372-378 (1992).

Although it may take time for a court to reorder a prison, Congress has determined that the courts should not be dilatory in undoing any excesses. These cases are a source of continuing harm to the extent that the court orders exceed the constitutional minimum. Federalism and the separation of powers are continually violated, the administration's authority erodes, guards are deterred from disciplining inmates, and innovation is stifled so long as the system operates under the specter of continued judicial intervention. See *supra*, at 16-17. Until the court rules on the continued validity of the stay, justice delayed will be justice denied. Cf. *In re Blodgett*, 502 U. S. 236, 239 (1992) (delay in ruling on habeas petition in capital case causes "severe prejudice to the state").



Unfortunately, not all district courts can be expected to rule promptly on these motions. The judge ruling on the motion to modify under the PLRA will typically be the same judge who issued the order in the first place. Given the considerable time and effort that went into these orders, and the high stakes of the initial litigation, courts may be loath to undo their handiwork. While district judges are constitutional officers who can and should be expected to execute their legal duties, they are also human beings. The power and notoriety that comes with these cases may be difficult to give up. See Cripe, *supra*, at 270. Thus a judge may not wish to see his handiwork undone during his lifetime. See *Pasadena City Bd. of Education* v. *Spangler*, 427 U. S. 424, 433 (1976). A judge confronted with a motion to modify an order that goes well beyond the constitutional minimum has a strong personal incentive to delay ruling on the case, thereby keeping in force an order which is now illegal. 18 U. S. C. § 3626(e)(2) is Congress's device to prevent this from happening.

Without a specific directive from Congress, it is truly difficult to compel a federal court to rule on a case. A two-and-one-half-year stay of execution without any ruling was not enough to support a writ of mandamus in a habeas corpus attack on a capital conviction. See *Blodgett*, *supra*, 502 U. S., at 240. Although this Court's stern warning to the Ninth Circuit, see *id.*, at 240-241, was warranted, prison authorities should not have to face the prospect of two rounds of interlocutory appeals, or a long wait to get the expedited ruling they deserve. Since the law underlying these injunctions has changed, "it would be particularly inequitable" to make the taxpayers and prison authorities labor "under a continuing injunction" that is no longer valid while the district court "bide[s] [its] time . . . ." *Agostini* v. *Felton*, 521 U. S. 203, 240 (1997). The automatic stay places the federal courts on a schedule in order to restore federalism and the separation of powers. After 30 to 90 days, it restores the normal state of affairs, in which prisons are run by prison administrators and not special masters, until a court actually rules that the order is legal. Nothing in the Constitution prevents this rule of procedure.

## IV. Congress has neither assumed a judicial function nor interfered impermissibly with the Judiciary's constitutionally assigned function.

There are two ways in which the separation-of-powers doctrine is violated—either by one branch assuming power that is "more appropriately diffused among separate branches" or by undermining another branch's "authority and independence . . . ." *Mistretta* v. *United States*, 488 U. S. 361, 382 (1989); see *INS* v. *Chadha*, 462 U. S. 919, 963 (1983) (Powell, J., concurring). This first prong is not relevant to the present case. Congress did not purport to decide any specific case when it passed the PLRA. A legislature assumes a judicial function when it actually operates as a court, such as the colonial legislatures which acted as "courts of equity of last resort, hearing original actions or providing appellate review of judicial judgments." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 219 (1995). The PLRA's automatic stay is merely a procedural rule, designed to keep courts and litigants on a tight schedule. See Part III B, *supra*. Although it can be delegated to the other branches, rulemaking is ultimately Congress's responsibility. See *Mistretta*, 488 U. S., at 386, n. 14.

The Seventh Circuit based its attack against the automatic stay provision on the statute's purported interference with the judicial function. It found that the time limit set by this rule was "an unconstitutional intrusion on the power of the courts to adjudicate cases." *French* v. *Duckworth*, 178 F. 3d 437, 446 (CA7 1999). The court further held that 18 U. S. C. § 3626(e)(2) was a rule of decision contrary to *United States* v. *Klein*, 80 U. S. (13 Wall.) 128 (1872). *French*, 178 F. 3d, at 446-447.

The PLRA's time limit does not unduly hinder a court from reaching any necessary decision. Contrary to the panel's reasoning, time limits on courts are neither rare nor unconstitutional. Since the automatic stay does not prevent a court from rendering its decision in any case, it does not violate the separation-of-powers doctrine.



### *A. No Rule of Decision.*

*Klein* can be described as a corollary to the maxim "hard cases make bad law," see, *e.g.*, *Hudson* v. *United States*, 522 U. S. 93, 106 (1997) (Stevens, J., concurring), namely that "strange cases make strange law." The statute struck down in *Klein* is without a doubt "exceedingly odd." See Scheidegger, Habeas Corpus, Relitigation, and the Legislative Power, 98 Colum. L. Rev. 888, 922 (1998). *Klein* involved the seizure and sale of cotton from Wilson, a Confederate supporter during the Civil War. Wilson had qualified for a blanket pardon issued by President Lincoln to all rebel supporters who swore an oath of loyalty to the Union. *Klein*, *supra*, 80 U. S., at 131-132. In an earlier decision, this Court had held that those who qualified for the pardon were entitled to reimbursement for any property seized during the war. *United States* v. *Padelford*, 76 U. S. (9 Wall.) 531 (1870). The Court of Claims ruled that in light of Wilson's pardon, his estate was entitled to the proceeds of the sale. See *Klein*, 80 U. S., at 132.

The statute was Congress's attempt to overrule *Padelford*. See Young, Congressional Regulation of Federal Courts' Jurisdiction and Processes: *United States* v. *Klein* Revisited, 1981 Wis. L. Rev. 1189, 1206-1209. The statute required this Court to remand any cases like Wilson's to the Court of Claims, to treat the pardon as conclusive evidence of disloyalty, and to dismiss the appeals of those seeking to recover the property of these persons. See *Klein*, *supra*, 80 U. S., at 130-134.

This statute's unconstitutionality is clear. This law was meant to overturn one part of President Lincoln's pardon. "Its great and controlling purpose is to deny to pardons granted by the President the effect which this Court has adjudged them to have." *Id.*, at 145. Congress cannot limit the pardon as it is the exclusive province of the Executive. See *id.*, at 148; see also R. Fallon, D. Meltzer, & D. Shapiro, Hart & Wechsler's The Federal Courts and the Federal System 369, n. 22 (4th ed. 1996) (viewing *Klein* as based on an "invasion of executive power"). This intrusion upon the Executive thus violated the separation of powers.

The *Klein* Court's holding that the act also violated the Judiciary's constitutional prerogatives is more complex. This Court determined that the statute's use of Congress's power to set jurisdiction was a cover for telling the courts how to rule in these cases. See *Klein*, *supra*, 80 U. S., at 146. It next concluded that it "prescribe[d] rules of decision to the judicial department in cases pending before it" and therefore violated the separation of powers. See *ibid.*

This holding is no longer entirely valid. "Whatever the precise scope of *Klein*, however, later decisions have made clear that its prohibition does not hold when Congress 'amend[s] applicable law.' " *Plaut*, *supra*, 514 U. S., at 218 (quoting *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429, 441 (1992)). *Plaut*'s implicit question about *Klein*'s scope deserves an answer. The best answer is that this part of *Klein* is very narrow, and unlikely to be repeated.

There is nothing inherently improper about Congress giving the courts a "rule of decision." In the broadest sense, Congress tells the courts how to decide cases each time it enacts a substantive rule of law. Enacting such rules is the very heart of the legislative power. See Scheidegger, *supra*, 98 Colum. L. Rev., at 909-911. Congress's power to enact procedural rules also gives this branch considerable influence over how courts exercise their power. The Rules of Evidence, subject to other constitutional limitations such as the Confrontation Clause, instructs the courts on what evidence they can and cannot admit. See, *e.g.*, Fed. R. Evid. 402 ("All relevant evidence is admissible except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority"). The federal reversible error rule, enacted by Congress to combat what it saw as the tendency of the federal appellate courts to be "citadels of technicality," is another example of Congress instructing the courts on how to decide cases. See *Kotteakos* v. *United States*, 328 U. S. 750, 759 (1946); 28 U. S. C. § 2111.

The *Klein* Court did not proscribe all rules of decision, but only those affecting pending cases. See *Klein*, *supra*, 80 U. S., at 146. As noted above, *Klein*'s retroactivity rule is no longer



all it seems. In *Robertson* v. *Seattle Audubon Soc.*, 503 U. S. 429 (1992), this Court confronted an act of Congress which stated that a particular plan for wildlife and forest management "is adequate consideration for the purpose of meeting the statutory requirements" that were the basis for a named pending case. *Id.*, at 430-431. This Court held this act constitutional, even though it effectively decided a pending case, because Congress changed the applicable law. *Id.*, at 441.

*Klein*'s rule is limited to legislation that does not change the relevant law, but merely dictates the outcome of a pending case under the unchanged law. In *Klein*, Congress could not change the applicable law, the President's pardon power. Because the law could not be changed, the legislation was no more than an attempt to mandate a result in the case, unconstitutionally infringing upon the Judiciary's power to apply the given law to a particular case. See, *e.g.*, *Fletcher* v. *Peck*, 10 U. S. (6 Cranch) 87, 136 (1810); *supra*, at 9-10.

The automatic stay provision does not tell the court how to decide the specific case before it. This rule changes the applicable law regarding the extent of injunctive relief. A host of decrees were issued at a time when the standard was different. Many, if not most, of those decrees are now illegal. A party should not have to continue to obey an order which is now illegal. The statute gives the issuing court a reasonable opportunity, up to 90 days, to confirm that the order is legal under present law. After that, it relieves the enjoined party from obedience to a probably illegal order unless and until a court determines it is legal.

The court retains full discretion over the final disposition of the case, see *Hadix* v. *Johnson*, 144 F. 3d 925, 940 (CA6 1998), rev'd in part on other grounds, *Martin* v. *Hadix*, 527 U. S. __, 144 L. Ed. 2d 347, 119 S. Ct. 1998 (1999); *Gavin* v. *Branstad*, 122 F. 3d 1081, 1089 (CA8 1997) ("The PLRA leaves the judging to the judges and therefore does not violate the *Klein* decision"). Since the court is not kept from giving "the effect to evidence, which in its own judgment, such evidence should have," *Klein*, *supra*, 80 U. S., at 147, the automatic stay does not violate *Klein*. Under the automatic stay, judges still have an "adjudicatory function to perform," *United States* v.

*Sioux Nation of Indians*, 448 U. S. 371, 392 (1980), deciding whether the decree comports with the PLRA's new requirements. While they can still rule, excessive delay in doing so results in temporary relief for the state. This is constitutional.

*B. Law and Retroactivity.*

*Klein* is not the only limit on congressional regulation of how the federal courts exercise their Article III power. In *Plaut*, *supra*, this Court identified three types of legislation that violate this aspect of the separation-of-powers doctrine: the legislation in *Klein*, vesting review of Article III courts in the Executive Branch, and the retroactive reopening of final judgments. See 514 U. S., at 218-219.

Commanding the courts to retroactively open final judgments violates the separation of powers by undermining a court's authority to decide cases. Finality is an essential part of the authority to decide cases "because 'a judicial Power' is one to render dispositive judgments." *Id.*, at 219 (quoting Easterbrook, Presidential Review, 40 Case W. Res. L. Rev. 905, 926 (1990)). Because neither § 3626(e)(2) nor the PLRA reopens a final judgment, *Plaut* is not violated.

The automatic stay implements the modification of injunctions and consent decrees in prisoner civil rights cases. Unlike the litigation reopened by Congress in *Plaut*, these judgments are never truly final. *Plaut* dealt with securities fraud suits that had been dismissed as untimely under the statute of limitations. *Plaut*, *supra*, 514 U. S., at 213-214. Congress attempted to reopen these cases by retroactively extending the statute of limitations for this class of litigants. See *id.*, at 214-215. The *Plaut* Court struck this down as violating the Judiciary's power to decide cases. *Id.*, at 218-219.

*Plaut* must be distinguished from the cases starting with *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U. S. (18 How.) 421 (1856), which have consistently held that a court's exercise of its injunctive power does not create a final judgment in this sense. In *Wheeling Bridge*, a prior decision of this Court had held that a bridge erected across the Ohio River by defendant obstructed the free navigation of the river, and accordingly ordered its removal or the obstruction's abatement. See *id.*, at



425. According to this prior decision, the obstruction violated federal statutes. See *id.*, at 430. After this decision, Congress enacted a law that this bridge was legal and that the company could maintain it at its present height. *Id.*, at 425. *Wheeling Bridge* confronted the constitutionality of this act.

The Court initially noted that Congress cannot "annul the judgment of the court already rendered, or the rights determined thereby in favor of the plaintiff." *Id.*, at 431. Yet this case was distinguishable from this proposition, see *ibid.*, due to the nature of the remedy imposed to protect the right adjudicated in the prior case.

The right to navigate the river was a "public right" that could support a private action for damages by a private party sustaining special damages from the obstruction. *Ibid.* The private party could also "file a bill in chancery for the purpose of removing the obstruction." *Ibid.* Because the right was "public" it was subject to the regulation of Congress. *Ibid.* A remedy of damages, being a final judgment, was beyond the power of Congress to legislate retroactively. *Ibid.* An equitable remedy, such as the abatement before the Court, was a different matter.

> "But that part of the decree, directing the abatement of the obstruction, is executory, a *continuing decree*, which requires not only the removal of the bridge, but enjoins the defendants against any reconstruction or continuance. Now, whether it is a *future existing or continuing* obstruction depends upon the question whether or not it interferes with the right of navigation. If, in the meantime, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced. There is no longer any interference with the enjoyment of the public right inconsistent with law, no more than there would be where the plaintiff himself had consented to it, after the rendition of the decree." *Id.*, at 431-432 (emphasis added).

So long as an injunction is in force, it is subject to modification even if it is a final decree. See *Pasadena City Bd. of*

*Education* v. *Spangler*, 427 U. S. 424, 437 (1976). "A continuing decree of injunction directed to events to come is subject always to adaption as events may shape the need." *United States* v. *Swift & Co.*, 286 U. S. 106, 114 (1932). The injunction may be continuously modified because the court's jurisdiction over the injunction does not end unless the injunction is terminated. "The source of the power to modify is of course the fact that the injunction often requires continuing supervision by the court and always a continuing willingness to apply its powers and processes on behalf of the party who obtained that equitable relief." *System Federation* v. *Wright*, 364 U. S. 642, 647 (1961). When the law or circumstances significantly change, the injunction must change with them. See *Agostini* v. *Felton*, 521 U. S. 203, 215 (1997); *Rufo* v. *Inmates of Suffolk County Jail*, 502 U. S. 367, 384 (1992). Indeed, courts have a duty to modify injunctions once the law has changed sufficiently. See *Agostini*, 521 U. S., at 240. *Wheeling Bridge* establishes the principle that Congress can change the circumstances, and thus the entitlement to injunctive relief, without violating the separation of powers, even if the injunction is "final."

Although it has the most relevance to the constitutionality of the PLRA's retroactive changing of the standards governing prison injunctions, *Wheeling Bridge* also supports the automatic stay provision. Since Congress was able to effectively overrule one of this Court's decisions in *Wheeling Bridge*, it can enact the much lesser intrusion of its temporary stay mechanism. If Congress did not unconstitutionally review this Court's decision in the first *Wheeling Bridge* case, then the PLRA's automatic stay similarly does not review any federal court ruling. Since the injunction in the present case is not final for the purpose of the separation of powers, Congress may provide for its temporary suspension in the context of the changed circumstances of the PLRA. The Seventh Circuit's holding that the automatic stay unconstitutionally reviews court decisions, see *French* v. *Duckworth*, 178 F. 3d 437, 446 (CA7 1999) is simply incorrect.

It is true that the present case is not identical to *Wheeling Bridge*. Unlike that case, Congress does not have total control



over the right underlying the remedy. Whatever the Constitution requires at minimum Congress cannot limit.[2] This does not change the analysis, however, because the automatic stay involved does not overturn any prior injunction. Although it may suspend the operation of the injunction if the District Court does not rule on its continued validity sufficiently quickly, ultimately those portions of the injunction that satisfy the constitutional minimums will be reinstated. Furthermore, many if not most prison injunctions go well beyond the constitutional minimum. See *supra*, at 14. If Congress can completely overturn a decision under *Wheeling Bridge*, then the automatic stay may relieve prison systems from the burden of excessive injunctions until the court decides whether and to what extent the injunction is actually within the legal limit.

This view of *Wheeling Bridge* is consistent with this Court's interpretations of the decision. Some commentators have distinguished *Wheeling Bridge* from the PLRA, because prison civil rights litigation does not rely on the public rights mentioned in that case. See, *e.g.*, Decker, Consent Decrees and the Prison Litigation Reform Act of 1995: Usurping Judicial Power or Quelling Judicial Micro-Management, 1997 Wis. L. Rev. 1275, 1290. This misreads the term and its context. In *Wheeling Bridge* the "public rights" was used in its "discussion[] of the law of nuisance" in which "the Court merely expressed agreement with the proposition that a court of equity could enjoin a public nuisance in a case brought by a private person who sustained specific injury." *California* v. *Sierra Club*, 451 U. S. 287, 296, n. 7 (1981). In the context of the separation-of-powers analysis, the fact that the injunction was against a public nuisance was irrelevant. What matters was that the injunction was necessarily "a continuing decree," *Wheeling Bridge*, *supra*, 59 U. S., at 431, and therefore subject to modification when Congress changed the legal circum-

---

2. And in fact, Congress has not limited injunctive relief below the constitutionally required minimums. See 18 U. S. C. § 3626(a)(1). Congress can eliminate federal equity power in an entire area, relegating aggrieved parties to state remedies, see, *e.g.*, 28 U. S. C. § 1341 (Tax Injunction Act), but it has not done so here.

stances. Even between private parties, an injunction is a "continuing decree" that is always subject to adaptation due to changes in the facts or the law. See *System Federation*, *supra*, 364 U. S., at 647. The character of the right is irrelevant for the separation-of-powers analysis. The issue here is not the validity or even the source of the legal rule that produced the Article III judgments, but rather the immunity from legislative abrogation of those judgments themselves. *Plaut*, *supra*, 514 U. S., at 239. Because Congress can effectively abrogate a continuing injunction, it may temporarily suspend one that goes beyond the constitutional minimum.

*C. Schedules and Judicial Power.*

The Seventh Circuit also found that the automatic stay unconstitutionally interfered with the court's ability to decide cases by impermissibly placing power over the status quo of the litigation in the hands of the party moving to terminate the decree. *French*, *supra*, 178 F. 3d, at 444. Congress can and does place courts under automatic rules. It also has the authority to set strict deadlines to the pace of the litigation. The Seventh Circuit's decision to strike down Congress's schedule betrays a misplaced sense of constitutional priorities.

Judge Easterbrook's dissent lists the many ways in which Congress limits the Judiciary's administrative independence, and would thus run afoul of the Seventh Circuit's holding. See *id.*, at 451-452 (Easterbrook, J., dissenting). The dissent correctly notes that § 3626(e)(2) is no different from these valid exercises of congressional power. As the dissent notes, the Seventh Circuit operates in a constitutional vacuum. "I am not aware of any decision by the Supreme Court holding, or even suggesting, that statutes requiring judges to adjudicate with dispatch pose constitutional problems." *Id.*, at 450.

*Amicus* will add only a few points to Judge Easterbrook's dissent. The Seventh Circuit distinguishes the automatic stay in bankruptcy law, 11 U. S. C. § 362, because that statute preserves "the court's equitable powers over the entirety of the bankruptcy estate, not superseding or undermining them." *French*, *supra*, 178 F. 3d, at 443. While the stay may preserve the status quo of the case before the bankruptcy court, it



severely disrupts the powers of other courts over the cases before them. Thus a civil plaintiff could not execute against the surety on a supersedeas bond when automatically stayed by the bankruptcy filing. See *Celotex Corp.* v. *Edwards*, 514 U. S. 300, 301 (1995). The filing in the *Celotex* case stayed over 141,000 suits, 100 appeals, and $70 million in supersedeas bonds. See *id.*, at 302, n. 2. This massive interference with the proceedings of other courts is triggered by a party filing a petition without a judicial decision. See 11 U. S. C. § 362(a).

There is nothing unconstitutional about Congress giving the courts a set of standards they must follow. Section 3626(e)(2) sets a deadline. Deadlines require hard and fast limits. "But '[d]eadlines are inherently arbitrary' while fixed dates 'are often essential to accomplish necessary results.' " *United States* v. *Locke*, 471 U. S. 84, 94 (1985) (quoting *United States* v. *Boyle*, 469 U. S. 241, 249 (1984)). For every deadline there is always someone who must be a day late, but courts cannot ignore the mandate of Congress's deadline in order to obtain " 'optimal' policy results." *Carlisle* v. *United States*, 517 U. S. 416, 430 (1996). The federal courts cannot use their inherent rulemaking power to overcome a specific rule of procedure. See *id.*, at 426. The fact that a congressional rule leads to a seemingly harsh result is irrelevant. The courts must follow Congress's command. *Locke*, 471 U. S., at 101.

Congress has often set priorities for courts to rule on cases by informing the Judiciary to rule quickly or grant expedited review in various classes of cases. See, *e.g.*, *United States* v. *Eichman*, 496 U. S. 310, 313, n. 2 (1990) (expedited review for federal flag burning statute under 18 U. S. C. § 700(d)(2)); *United States* v. *Salerno*, 481 U. S. 739, 742-743 (1987) (expedited review for pretrial detention orders under the Bail Reform Act, 18 U. S. C. § 3141(b)(c)); *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 487-488 (1985) (expedited review of constitutional attacks on the Federal Election Commission Act under 28 U. S. C. § 437(h)(a)); *NAACP* v. *New York*, 413 U. S. 345, 354 (1973) (under 42 U. S. C. § 1971(g), when the Attorney General sues to enforce the Voting Rights Act of 1965, the United States may request a three-judge court which must " 'cause the case to

be in every way expedited' "). This Court has never questioned Congress's authority to order the Judiciary's priorities in deciding litigation. It is the Legislative Branch's prerogative to define a category of cases as too important for the courts to ignore or delay. See *Heckler* v. *Edwards*, 465 U. S. 870, 881 (1984). The only difference between the automatic stay and the many expedited review statutes upheld by this Court, is that § 3626(e)(2) contains a specific deadline. This distinction has no constitutional significance.

The automatic stay does not mandate the result in any specific case. It merely requires the court to act expeditiously or effectively grant temporary relief to the party injured by the delay. One may disagree with the place Congress struck the balance between the states' and prisoners' interests, but that is Congress's prerogative, to order priorities in federal litigation. Most importantly, it is Congress's *duty* to check the excesses of the federal Judiciary, by relieving prisons from excessive court orders.

## CONCLUSION

The decision of the Seventh Circuit should be reversed.

February, 2000

Respectfully submitted,

CHARLES L. HOBSON

*Attorney for Amicus Curiae*
*Criminal Justice Legal Foundation*

## APPENDIX A

Sec. 3626. Appropriate remedies with respect to prison conditions

"(a) Requirements for Relief.—

"(1) Prospective relief.—(A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

"(B) The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law, unless—

"(i) Federal law permits such relief to be ordered in violation of State or local law;

"(ii) the relief is necessary to correct the violation of a Federal right; and

"(iii) no other relief will correct the violation of the Federal right.

"(C) Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.

"(2) Preliminary injunctive relief.—In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on

public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

"(3) Prisoner release order.—(A) In any civil action with respect to prison conditions, no prisoner release order shall be entered unless—

"(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and

"(ii) the defendant has had a reasonable amount of time to comply with the previous court orders.

"(B) In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court in accordance with section 2284 of title 28, if the requirements of subparagraph (E) have been met.

"(C) A party seeking a prisoner release order in Federal court shall file with any request for such relief, a request for a three-judge court and materials sufficient to demonstrate that the requirements of subparagraph (A) have been met.

"(D) If the requirements under subparagraph (A) have been met, a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered.

"(E) The three-judge court shall enter a prisoner release order only if the court finds by clear and convincing evidence that—

"(i) crowding is the primary cause of the violation of a Federal right; and



"(ii) no other relief will remedy the violation of the Federal right.

"(F) Any State or local official or unit of government whose jurisdiction or function includes the appropriation of funds for the construction, operation, or maintenance of program facilities, or the prosecution or custody of persons who may be released from, or not admitted to, a prison as a result of a prisoner release order shall have standing to oppose the imposition or continuation in effect of such relief and to seek termination of such relief, and shall have the right to intervene in any proceeding relating to such relief.

"(b) Termination of Relief.—

"(1) Termination of prospective relief.—(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener—

"(i) 2 years after the date the court granted or approved the prospective relief;

"(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or

"(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

"(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

"(2) Immediate termination of prospective relief.—In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

"(3) Limitation.—Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

"(4) Termination or modification of relief.—Nothing in this section shall prevent any party or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

"(c) Settlements.—

"(1) Consent decrees.—In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).

"(2) Private settlement agreements.—(A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled.

"(B) Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law.

"(d) State Law Remedies.—The limitations on remedies in this section shall not apply to relief entered by a State court based solely upon claims arising under State law.

"(e) Procedure for Motions Affecting Prospective Relief.—

"(1) Generally.—The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions.



"(2) Automatic stay.—Any prospective relief subject to a pending motion shall be automatically stayed during the period—

"(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

"(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

"(B) ending on the date the court enters a final order ruling on the motion.

"(f) Special Masters.—

"(1) In general.—(A) In any civil action in a Federal court with respect to prison conditions, the court may appoint a special master who shall be disinterested and objective and who will give due regard to the public safety, to conduct hearings on the record and prepare proposed findings of fact.

"(B) The court shall appoint a special master under this subsection during the remedial phase of the action only upon a finding that the remedial phase will be sufficiently complex to warrant the appointment.

"(2) Appointment.—(A) If the court determines that the appointment of a special master is necessary, the court shall request that the defendant institution and the plaintiff each submit a list of not more than 5 persons to serve as a special master.

"(B) Each party shall have the opportunity to remove up to 3 persons from the opposing party's list.

"(C) The court shall select the master from the persons remaining on the list after the operation of subparagraph (B).

"(3) Interlocutory appeal.—Any party shall have the right to an interlocutory appeal of the judge's selection of the special master under this subsection, on the ground of partiality.

"(4) Compensation.—The compensation to be allowed to a special master under this section shall be based on an hourly rate not greater than the hourly rate established under section 3006A for payment of court-appointed counsel, plus costs reasonably incurred by the special master. Such compensation and costs shall be paid with funds appropriated to the Judiciary.

"(5) Regular review of appointment.—In any civil action with respect to prison conditions in which a special master is appointed under this subsection, the court shall review the appointment of the special master every 6 months to determine whether the services of the special master continue to be required under paragraph (1). In no event shall the appointment of a special master extend beyond the termination of the relief.

"(6) Limitations on powers and duties.—A special master appointed under this subsection—

"(A) may be authorized by a court to conduct hearings and prepare proposed findings of fact, which shall be made on the record;

"(B) shall not make any findings or communications ex parte;

"(C) may be authorized by a court to assist in the development of remedial plans; and

"(D) may be removed at any time, but shall be relieved of the appointment upon the termination of relief.

"(g) Definitions.—As used in this section—

"(1) the term 'consent decree' means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements;

"(2) the term 'civil action with respect to prison conditions' means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus



proceedings challenging the fact or duration of confinement in prison;

"(3) the term 'prisoner' means any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program;

"(4) the term 'prisoner release order' includes any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison;

"(5) the term 'prison' means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

"(6) the term 'private settlement agreement' means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled;

"(7) the term 'prospective relief' means all relief other than compensatory monetary damages;

"(8) the term 'special master' means any person appointed by a Federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure or pursuant to any inherent power of the court to exercise the powers of a master, regardless of the title or description given by the court; and

"(9) the term 'relief' means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements."

Feb 3 2000 (8) (7)

Nos. 99-224; 99-582

Supreme Court, U.S.
FILED
FEB 3 2000
CLERK

IN THE
# Supreme Court of the United States

SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY *et al.*,
*Petitioners,*
v.
RICHARD A. FRENCH *et al.*,
*Respondents.*

UNITED STATES OF AMERICA,
*Petitioner,*
v.
RICHARD A. FRENCH *et al.*,
*Respondents.*

**On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## BRIEF OF THE NATIONAL GOVERNORS' ASSOCIATION, NATIONAL LEAGUE OF CITIES, COUNCIL OF STATE GOVERNMENTS, U.S. CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, AND INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION AS *AMICI CURIAE* SUPPORTING PETITIONERS SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY *ET AL.*

RICHARD RUDA *
Chief Counsel
JAMES I. CROWLEY
STATE AND LOCAL LEGAL CENTER
444 North Capitol Street, N.W.
Suite 345
Washington, D.C. 20001
(202) 434-4850
* Counsel of Record for the *Amici Curiae*

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

3000

## QUESTIONS PRESENTED

1. Whether a district court retains equitable authority to suspend the automatic stay provision of the Prison Litigation Reform Act.

2. Whether the automatic stay provision of the Prison Litigation Reform Act violates separation of powers principles.

## TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTIONS PRESENTED | i |
| TABLE OF AUTHORITIES | iv |
| INTEREST OF THE *AMICI CURIAE* | 1 |
| SUMMARY OF ARGUMENT | 2 |
| ARGUMENT | 5 |
| PLRA'S AUTOMATIC STAY PROVISION, CORRECTLY CONSTRUED BY THE COURT OF APPEALS, DOES NOT VIOLATE SEPARATION OF POWERS PRINCIPLES | 5 |
| A. PLRA's Automatic Stay Provision Precludes A Federal Court From Invoking Traditional Equitable Standards To Maintain In Effect An Existing Decree Which Is Unsupported By The Necessary Findings | 9 |
| B. The Automatic Stay Provision Does Not Violate Separation Of Powers Principles | 19 |
| CONCLUSION | 29 |

## TABLE OF AUTHORITIES


| Cases | Page |
|---|---|
| *Adair v. United States*, 208 U.S. 161 (1908) | 23 |
| *Agostini v. Felton*, 117 S.Ct. 1997 (1997) | 27-28 |
| *Anderson v. Yungkau*, 329 U.S. 482 (1947) | 2, 3, 12, 12-13 |
| *Andrus v. Glover Constr. Co.*, 446 U.S. 608 (1980) | 13 |
| *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379 (1953) | 16 |
| *Bell v. Wolfish*, 441 U.S. 520 (1979) | 5 |
| *Board of Ed. of Oklahoma City v. Dowell*, 498 U.S. 237 (1991) | 7, 26 |
| *Brown v. Swann*, 35 U.S. (10 Pet.) 497 (1836) | 10 |
| *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981) | 15-16 |
| *Coppage v. Kansas*, 236 U.S. 1 (1915) | 23 |
| *Cary v. Curtis*, 44 U.S. (3 How.) 236 (1845) | 20 |
| *Dayton Bd. of Ed. v. Brinkman*, 433 U.S. 406 (1977) | 7 |
| *Dougan v. Singletary*, 129 F.3d 1424 (11th Cir. 1997) | 14 |
| *Escoe v. Zerbst*, 295 U.S. 490 (1935) | 12 |
| *Ex parte Fahey*, 322 U.S. 258 (1947) | 16 |
| *Ex parte Young*, 209 U.S. 123 (1908) | 21 |
| *Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997) | 14 |
| *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998) | 9, 15 |
| *Hadix v. Johnson*, 933 F. Supp. 1360 (E.D. Mich. 1996) | 15 |
| *Hadix v. Johnson*, 933 F. Supp. 1362 (W.D. Mich. 1996) | 15 |
| *Hecht Co. v. Bowles*, 321 U.S. 321 (1944) | 10 |
| *Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997) | 14 |
| *Kline v. Burke Const. Co.*, 260 U.S. 226 (1922) | 20-21, 23 |
| *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323 (1938) | 3, 20, 23 |
| *Lewis v. Casey*, 518 U.S. 343 (1996) | *passim* |
| *Livingston v. Story*, 34 U.S. (9 Pet.) 632 (1835) | 10 |
| *Lockerty v. Phillips*, 319 U.S. 182 (1943) | 20, 21 |
| *Milliken v. Bradley*, 418 U.S. 717 (1974) | 4, 7, 8, 26 |
| *Milliken v. Bradley*, 433 U.S. 267 (1977) | 7, 26 |




## TABLE OF AUTHORITIES—Continued


| | Page |
|---|---|
| *Missouri v. Jenkins*, 515 U.S. 70 (1995) | 7 |
| *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855) | 27 |
| *Plaut v. Spendthrift Farm Inc.*, 514 U.S. 211 (1995) | 4, 19, 25, 27 |
| *Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996) | 14 |
| *Porter v. Warner Holding Co.*, 327 U.S. 395 (1946) | 10 |
| *Procunier v. Martinez*, 416 U.S. 396 (1974) | 5 |
| *Robertson v. Seattle Audubon Soc.*, 503 U.S. 429 (1992) | 27 |
| *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) | 28 |
| *Ruiz v. Estelle*, 666 F.2d 854 (5th Cir. 1982) | 6 |
| *Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999) | 9, 15 |
| *Sibbach v. Wilson*, 312 U.S. 1 (1941) | 10 |
| *Smith v. Stevens*, 77 U.S. (10 Wall.) 321 (1870) | 13 |
| *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1 (1974) | 7 |
| *Toussaint v. McCarthy*, 597 F. Supp. 1388 (N.D. Cal. 1984) | 6 |
| *Turner v. Safley*, 482 U.S. 78 (1987) | 1 |
| *Truax v. Corrigan*, 257 U.S. 312 (1912) | 23 |
| *United States v. Duell*, 172 U.S. 576 (1899) | 16 |
| *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871) | 4, 19 |
| *United States v. Smith*, 499 U.S. 160 (1991) | 13 |
| *United States v. Swift & Co.*, 286 U.S. 106 (1932) | 28 |
| *Virginian Ry. Co. v. System Federation*, 300 U.S. 515 (1937) | 22 |
| *Whitehouse v. Illinois Cent. R.R. Co.*, 349 U.S. 366 (1955) | 16 |
| *Will v. United States*, 389 U.S. 90 (1967) | 16 |
| *Yakus v. United States*, 321 U.S. 414 (1944) | *passim* |

Constitutional Provisions & Statutes

| | |
|---|---|
| Act of Mar. 2, 1973, § 5, 1 Stat. 335 | 21 |
| Emergency Price Control Act of 1942, 56 Stat. 23 | 21 |
| Fed. R. Civ. P. 37 | 18 |

TABLE OF AUTHORITIES—Continued


| | Page |
|---|---|
| Fed. R. Civ. P. 65 | 24 |
| Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321-26—1321-77 (1996) | 1, 7 |
| Pub. L. No. 104-134, Title I, § 101(a), 110 Stat. 1321-66 | 14 |
| 18 U.S.C. § 3626(a) (1) | 8 |
| 18 U.S.C. § 3626(a) (2) | 17 |
| 18 U.S.C. § 3626(b) (1) | 8 |
| 18 U.S.C. § 3626(b) (2) | 8 |
| 18 U.S.C. § 3626(b) (3) | 8, 13, 17, 25 |
| 18 U.S.C. § 3626(e) | 1 |
| 18 U.S.C. § 3626(e) (1) | 8-9 |
| 18 U.S.C. § 3626(e) (2) | *passim* |
| 18 U.S.C. § 3626(e) (2) (B) | 17, 25, 27 |
| 18 U.S.C. § 3626(e) (3) | *passim* |
| 18 U.S.C. § 3626(e) (4) | *passim* |
| 18 U.S.C. § 3626(f) (1) | 13, 17 |
| 28 U.S.C. § 1292(a) (1) | 9, 15-16 |
| 28 U.S.C. § 1341 | 21 |
| 28 U.S.C. § 1342 | 21 |
| 28 U.S.C. § 2281 | 21 |
| 28 U.S.C. § 2283 | 3, 21, 24 |
| 29 U.S.C. § 107 | 4, 23, 24 |
| U.S. Const. art. III, § 1 | 3, 20, 23-24, 24 |


Other Authorities


| | |
|---|---|
| *The American Heritage Dictionary of the English Language* (1979) | 12 |
| *Black's Law Dictionary* (6th ed. 1990) | 2, 11-12 |
| 141 Cong. Rec. S14413 (daily ed. Sept. 27, 1995) | 7 |
| 141 Cong. Rec. S14414 (daily ed. Sept. 27, 1995) | 6 |
| 141 Cong. Rec. S14418 (daily ed. Sept. 27, 1995) | 7 |
| 141 Cong. Rec. S14626 (daily ed. Sept. 29, 1995) | 14 |
| 143 Cong. Rec. S12269 (daily ed. Nov. 9, 1997) | 14-15 |
| Richard H. Fallon *et al.*, *Hart and Wechsler's The Federal Courts And The Federal System* (4th ed. 1996) | 21, 23 |
| H.R. Rep. No. 104-21 (1995) | 7, 14, 25, 26 |
| *Moore's Federal Practice* (1999) | 11, 18 |




TABLE OF AUTHORITIES—Continued


| | Page |
|---|---|
| Editorial, *Criminal Oversight*, Wall St. J., June 19, 1996 | 6 |
| David Schoenbrod & Ross Sandler, *Rule of Law: In New York City, the Jails Still Belong to the Judges*, Wall St. J., Sept. 10, 1997 | 6 |
| *Webster's New Collegiate Dictionary* (1975) | 12 |
| Charles A. Wright & Arthur Miller, *Federal Practice & Procedure* (1982) | 17-18 |

## INTEREST OF THE *AMICI CURIAE*

*Amici* are organizations whose members include state, county, and municipal governments and officials throughout the United States.[1] *Amici* have a compelling interest in legal issues that affect state and local governments.

The administration of state prisons and local jails is a complex and difficult undertaking. Notwithstanding the Court's admonition that the lower federal courts are not to become "the primary arbiters of what constitutes the best solution to every administrative problem," *Turner v. Safley*, 482 U.S. 78, 89 (1987), federal courts have issued broad structural decrees which exceed constitutional norms and continue in effect long after officials have remedied any constitutional violations. *See, e.g., Lewis v. Casey*, 518 U.S. 343 (1996).

Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-66–1321-77 (1996), to prevent protracted federal court interference with state prison administration. The provision at issue here, the automatic stay, is an essential part of PLRA as it directs a district court to rule on termination and modification motions within a reasonable time. *See* 18 U.S.C. § 3626(e). The United States' view that a federal court retains inherent equitable authority to stay the automatic stay finds no support in the statute's language and would nullify its purpose. And the court of appeals' view that the provision violates separation of powers principles is contradicted by the text of Article III and two centuries of congressional control over the jurisdiction of the lower federal courts.

---

[1] Pursuant to Rule 37.3 of the Rules of this Court, the parties have consented to the filing of this brief *amicus curiae*. Their letters of consent have been filed with the Clerk of the Court. Pursuant to Rule 37.6, *amici* state that this brief was not authored in whole or in part by counsel for a party, and no person or entity, other than *amici* or their members, made a monetary contribution to the preparation or submission of this brief.

Because of the importance of these issues to *amici* and their members, this brief is submitted to assist the Court in its resolution of the case.

## SUMMARY OF ARGUMENT

A. The court of appeals correctly construed PLRA's automatic stay provision as "constrain[ing] the authority of the district courts to impose and sustain prospective relief." Pet. App. 25a.[2] The statute's text, structure, and legislative history provide conclusive evidence that Congress intended to foreclose a federal court's ability to stay the operation of the automatic stay beyond a 60-day postponement. Under PLRA federal courts cannot maintain an injunctive order in effect in the absence of written findings which establish the legal basis for continuing the decree.

The text of § 3626(e)(2) states that "[a]ny motion to modify or terminate prospective relief . . . *shall* operate as a stay during the period . . . beginning on the 30th day after such motion is filed . . . and . . . ending on the date the court enters a final order ruling on the motion." 18 U.S.C. § 3626(e)(2) (emphasis added). It is apparent that Congress intended the term "shall" to be given its meaning in common usage. "In common or ordinary parlance, and in its ordinary signification, the term 'shall' is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation." *Black's Law Dictionary* 1375 (6th ed. 1990). *See also Anderson v. Yungkau*, 329 U.S. 482, 485 (1947). The fact that Congress characterized the stay as "automatic," 18 U.S.C. §§ 3626(e)(2), (3), (4), reinforces the conclusion that the stay is mandatory.

---

[2] All references to "Pet. App." in this brief are to the appendix to the petition for certiorari filed by the Superintendent of the Pendleton Correctional Facility *et al.* (No. 99-224).



The mandatory nature of the stay is also confirmed by the structure of the PLRA. Elsewhere in subsection (e), Congress expressly provided that a "court may postpone the effective date of [the] automatic stay . . . for not more than 60 days for good cause." *Id.* § 3626(e)(3). This express grant of limited discretion counsels against implying any greater exemption from the mandatory operation of the automatic stay and also demonstrates Congress' awareness, when enacting the PLRA, of the difference between "shall" and "may." *See Anderson*, 329 U.S. at 485.

Contrary to the views of the United States, Congress' authorization of an interlocutory appeal of orders staying the stay, *see id.* § 3626(e)(4), does not "impl[y] that district courts have authority to issue such orders." U.S. Pet. 16. As originally enacted, PLRA contained no provision for interlocutory review. The provision was added in response to several lower court decisions holding the automatic stay unconstitutional, to ensure that such decisions would be immediately appealable notwithstanding their interlocutory nature.

B. The automatic stay provision does not violate separation of powers principles. The Constitution expressly gives Congress the authority to regulate the equitable jurisdiction of the lower federal courts. *See* U.S. Const. art. III, § 1. "There can be no question of the power of Congress . . . to define and limit the jurisdiction of the inferior courts of the United States." *Lauf v. E. G. Shinner & Co., Inc.*, 303 U.S. 323, 330 (1938).

Congress has exercised its power to limit the equity jurisdiction of the lower federal courts in a number of ways. It has prohibited the courts from exercising equitable jurisdiction over entire categories of cases. *See* 28 U.S.C. § 2283 (Anti-Injunction Act). It has limited the authority of the federal district courts to issue interlocu-

tory injunctions. *See Yakus v. United States*, 321 U.S. 414 (1944). Finally, Congress can impose time limits on the issuance of equitable decrees and require federal courts to make findings as a prerequisite to the issuance of an injunction, as it did in the Norris-LaGuardia Act. *See* 29 U.S.C. § 107.

Nor does the automatic stay provision violate the Constitution because, as the court of appeals put it, Article III " 'gives the Federal Judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy.' " Pet. App. 29a (citation omitted). The automatic stay provision does not intrude on the power of federal courts to decide a case. Indeed, the whole point of § 3626(e)(2) is to encourage the court to decide the case.

That sub-section (e) directs that an order be suspended in the absence of the required findings within 90 days—subject to later reimposition if those findings are made—does not render it an "unconstitutional intrusion on the power of the courts to adjudicate cases." Pet. App. 29a. The "federal remedial power may be exercised 'only on the basis of a constitutional violation.' " *Milliken v. Bradley*, 418 U.S. 717, 738 (1974) (citation omitted). Congress, like the courts, is empowered to weigh the equities and conclude that the continuance of injunctions that are unsupported by the constitutionally required findings is contrary to the public interest. Requiring suspension of a decree when a court fails to make the constitutionally required findings is not a "usurpation of judicial functions" in violation of Article III. *Yakus*, 321 U.S. at 442.

Nor does the automatic stay unconstitutionally prescribe a rule of decision in a pending case in violation of *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871). "Whatever the precise scope of *Klein*, . . . its prohibition does not take hold when Congress amend[s] applicable law." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218 (1995)



(citation and internal quotation omitted). Indeed, it is well established that when Congress changes the applicable law, a court of equity errs when it refuses to modify a continuing injunction. If amending the substantive law applicable to a continuing injunction does not violate the separation of powers, Congress surely can adopt procedures to protect the rights of parties who are entitled to the benefit of the new law. Because administrators and the public would otherwise have no adequate remedy where a federal court continues an invalid injunction, Article III, Section 1, empowers Congress to protect the public interest by requiring a federal court either to rule or stay the decree.

## ARGUMENT

### PLRA'S AUTOMATIC STAY PROVISION, CORRECTLY CONSTRUED BY THE COURT OF APPEALS, DOES NOT VIOLATE SEPARATION OF POWERS PRINCIPLES

As the Court recognized more than twenty years ago,

> courts have, in the name of the Constitution, become increasingly enmeshed in the minutiae of prison operations. Judges, . . . no less than others in our society, have a natural tendency to believe that their individual solutions to often intractable problems are better and more workable than those of the persons who are actually charged with and trained in the running of the particular institution under examination.

*Bell v. Wolfish*, 441 U.S. 520, 562 (1979). *See also Procunier v. Martinez*, 416 U.S. 396, 405 (1974) ("[T]he problems of prisons in America are complex and intractable, and . . . are not readily susceptible of resolution by decree. . . . [C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform."); *Lewis v. Casey*, 518 U.S. 343, 362 (1996).

Notwithstanding the Court's admonitions in *Bell* and *Procunier*, some federal courts have continued to assert

broad authority to micromanage the operations of state and local prisons and jails. *See Lewis*, 518 U.S. at 346-48, 355 n.5 (discussing district court order); *Ruiz v. Estelle*, 666 F.2d 854, 862-73 (5th Cir. 1982) (reprinting district court's injunction against Texas Department of Corrections); *Toussaint v. McCarthy*, 597 F. Supp. 1388, 1422-26 (N.D. Cal. 1984) (injunction applicable to California's Folsum & San Quentin prisons).[3] In some instances, federal courts have ordered relief which has resulted in serious harm to the public. *See* 141 Cong. Rec. S 14414 (daily ed. Sept. 27, 1995) (statement of Sen. Dole) (in Philadelphia, "a court-ordered prison cap has put thousands of violent criminals back on the city's streets" and "turn[ed] the town into a major drug smuggling port") (internal quotation and citation omitted).[4] And several federal courts have ordered broad, far-reaching injunctive relief, disregarding the limitations on the equitable powers of federal courts established by this Court's jurisprudence. *See, e.g., Lewis*, 518 U.S. at 347-48; 357-60.

---

[3] *See also* David Schoenbrod & Ross Sandler, *Rule of Law: In New York City, the Jails Still Belong to the Judges*, Wall St. J., Sept. 10, 1997, at A23, *available in* 1997 WL-WSJ 14165674 (describing court order governing New York City's jails as "a hodgepodge of serious remedies mixed with the wishes of those at the negotiating table: Only licensed barbers are allowed to cut hair, coffee already sugared may never be served at meals. Boraxo should be used to clean showers, the court-appointed jail monitor must be given a city car within one grade of the prison commissioner's").

[4] According to the Wall Street Journal, Prof. John DiIulio found that "67% of those released [because of the Philadelphia order] failed to appear for trial." Editorial, *Criminal Oversight*, Wall St. J., June 19, 1996, at A18, *available in* 1996 WL-WSJ 3106141. In one 18-month period, "9,732 arrestees out on the streets because [of the order] were arrested on second charges, including 79 murders, 90 rapes, 701 burglaries, 959 robberies, 1,113 assaults, 2,215 drug offenses and 2,748 thefts." *Id.*



It is axiomatic that "[a] federal remedial power may be exercised 'only on the basis of a constitutional violation' and, '[a]s with any equity case, the nature of the violation determines the scope of the remedy.'" *Milliken v. Bradley*, 418 U.S. 717, 738 (1974) (quoting *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 16 (1971)). *Accord Lewis*, 518 U.S. at 357 (quoting *Missouri v. Jenkins*, 515 U.S. 70, 88, 89 (1995)). The Court has further explained that in cases involving state institutions, injunctive relief "must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution." *Missouri v. Jenkins*, 515 U.S. at 98 (quoting *Milliken v. Bradley*, 433 U.S. 267, 281 (1977)). A corollary of these principles is that injunctive relief "should be no broader and last no longer than necessary to remedy the discrete constitutional violation." *Lewis*, 518 U.S. at 393 (Thomas, J., concurring); *see also Dayton Bd. of Ed. v. Brinkman*, 433 U.S. 406, 420 (1977) ("Once a constitutional violation is found, a federal court is required to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation.'") (quoting *Swann*, 418 U.S. at 744); *cf. Board of Ed. of Oklahoma City v. Dowell*, 498 U.S. 237, 247 (1991) ("federal supervision of local school systems was intended as a temporary measure to remedy past discrimination").

To "help restore balance to prison conditions litigation and . . . ensure that Federal court orders are limited to remedying actual violations of prisoners' rights," 141 Cong. Rec. S 14418 (daily ed. Sept. 27, 1995) (statement of Sen. Hatch), Congress enacted the Prison Litigation Reform Act of 1995 (PLRA). Pub. L. No. 104-134, 110 Stat. 1321-66 to 1321-77 (1996). *See* H.R. Rep. No. 104-21, at 8, 23-26 (1995); 141 Cong. Rec. S 14413 (daily ed. Sept. 27, 1995). PLRA prohibits a federal court from ordering injunctive relief in prison condition

cases "unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1).

PLRA also provides for the re-examination of existing decrees by providing for their termination, at certain intervals, "upon the motion of any party or intervener." *Id.* § 3626(b)(1). Under Section 3626(b)(2), "a defendant . . . shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right."

The statute provides, however, that "[p]rospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." *Id.* § 3626(b)(3). PLRA thus preserves the authority of the federal courts to continue an injunction when necessary to remedy actual violations of federal rights. Moreover, the standard which PLRA prescribes for ordering or continuing injunctive relief does no more than codify the standards which this Court has articulated in its cases. *See, e.g., Lewis*, 518 U.S. at 357; *Milliken*, 418 U.S. at 717.

PLRA further enacted a procedure for ruling on termination and modification motions. First, Congress instructed that a federal court "shall promptly rule on any motion to modify or terminate prospective relief" in a



prison condition case and that "[m]andamus shall lie to remedy any failure to issue a prompt ruling on such a motion." 18 U.S.C. § 3626(e)(1). Second, Congress provided that "[a]ny motion to modify or terminate prospective relief made under [§ 3626(b)] shall operate as a stay during the period . . . beginning on the 30th day after such motion is filed . . . and . . . ending on the date the court enters a final order ruling on the motion." *Id.* § 3626(e)(2). Congress authorized a court to "postpone the effective date of an automatic stay . . . for not more than 60 days for good cause," but excluded "general congestion of the court's calendar" as a "permissible" cause. *Id.* § 3626(e)(3). Finally, Congress provided for interlocutory review under 28 U.S.C. § 1292(a)(1) of "[a]ny order staying, suspending, delaying, or barring the operation of the automatic stay." 18 U.S.C. § 3626(e)(4).

### A. PLRA's Automatic Stay Provision Precludes A Federal Court From Invoking Traditional Equitable Standards To Maintain In Effect An Existing Decree Which Is Unsupported By The Necessary Findings

The court of appeals correctly construed PLRA's automatic stay provision as "constrain[ing] the authority of the district courts to impose and sustain prospective relief." Pet. App. 25a. The United States and the Fifth and Sixth Circuits are simply wrong in interpreting the statute as not displacing the authority of the federal courts "to suspend the automatic stay based on traditional equitable standards." U.S. Pet. 9 (citing *Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999) and *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998)). Moreover, the United States' reading is not supported by "the principle that a statute should be construed to avoid a serious constitutional question, when such a construction is fairly possible." *Id.* at 17 (citations omitted). The text and structure of PLRA make inescapable the conclusion that Congress intended

that a decree which is not supported by the proper findings be suspended after ninety days, subject to the court's power to reimpose it upon making the required findings. The United States' view that federal courts can nonetheless stay the automatic stay would subvert Congress' carefully crafted scheme. And as explained in part B below, PLRA's automatic stay provision is constitutional.

The Court has long recognized that the power of Congress to ordain and establish courts subordinate to the Supreme Court "carries with it the power to prescribe and regulate [the] modes of proceedings in such courts." *Livingston v. Story*, 43 U.S. (9 Pet.) 632, 656 (1835). More recently the Court has observed that "Congress has undoubted power to regulate the practice and procedure of the federal courts." *Sibbach v. Wilson*, 312 U.S. 1, 655, 9 (1941). This power necessarily includes the authority to prescribe procedures that the federal courts must follow in exercising their equitable powers.

To be sure, the Court has explained that "the comprehensiveness of [the] equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command." *Porter v. Warner Holding Co.*, 327 U.S. 395, 398 (1946); *see also Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944). The Court has further stated that "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Porter*, 327 U.S. at 398; *see also Hecht Co.*, 321 U.S. at 330 ("a major departure" from traditional equity practice "should [not] be lightly implied"); *Brown v. Swann*, 35 U.S. (10 Pet.) 497, 503 (1836) ("The great principles of equity should not be yielded to light inferences, or doubtful construction.").



The text, structure, and legislative history of PLRA, however, provide conclusive evidence that Congress intended to foreclose a federal court's ability to stay the operation of the automatic stay and thereby maintain the status quo beyond the ninety-day period in the absence of written findings which establish the legal basis for continuing the decree. "Courts have no power to presume and remediate harm that has not been established." *Lewis*, 518 U.S. at 360 n.7. And while federal courts enjoy "inherent authority to issue interim equitable relief to preserve the status quo" while a case is pending, U.S. Pet. 12, courts can abuse this power. *Cf. Moore's Federal Practice* ¶ 65.02 & n.6 (1999) (Fed. R. Civ. P. 65 was adopted to "guard[] against abuse of the injunction remedy"). It is fully within the authority of Congress to determine that the public interest is best served by requiring the suspension of an existing decree unless and until a court makes the constitutionally required findings.

That is exactly what Congress did here. The text of Section 3626(e)(2) states that "[a]ny motion to modify or terminate prospective relief . . . *shall* operate as a stay during the period . . . beginning on the 30th day after such motion is filed . . . and ending on the date the court enters a final order ruling on the motion." 18 U.S.C. § 3626(e)(2) (emphasis added). The United States' contention that this provision "is most naturally read as permitting" the district court to "preserv[e] the status quo by suspending the automatic stay," U.S. Pet. 13, is irreconcilable with the statute.

It is apparent that Congress intended the term "shall" to be given its meaning in common usage. "In common or ordinary parlance, and its ordinary signification, the term 'shall' is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. The word in ordinary usage means 'must' and

is inconsistent with a concept of discretion." *Black's Law Dictionary* 1375 (6th ed. 1990). *See also Anderson v. Yungkau*, 329 U.S. 482, 485 (1947) (quoting *Escoe v. Zerbst*, 295 U.S. 490, 493 (1935) ("The word 'shall' is ordinarily '[t]he language of command.' ")); *Webster's New Collegiate Dictionary* 1064 (1975) ("used in laws, regulations, or directives to express what is mandatory"); *The American Heritage Dictionary Of The English Language* 1189 (1979) ("Compulsion, with the force of *must*, in statutes").

Two additional textual indications confirm that subsection (e)(2)'s use of the term "shall" does not mean "may." First, Congress characterized the stay as "automatic." *See* 18 U.S.C. §§ 3626(e)(2), (3), (4). In common usage, that term expresses Congress' intent that the stay be issued as a matter of course and is not discretionary. *See The American Heritage Dictionary*, at 89-90 (defining "automatic" as "[a]cting or operating in a manner essentially independent of external influence or control"); *Webster's New Collegiate Dictionary*, at 76 (defining "automatic" as "largely or wholly involuntary" or "mechanical").

Second, Congress provided that a "court may postpone the effective date of the stay . . . for not more than 60 days for good cause." *Id.* § 3626(e)(3). This limited grant of discretion excludes construing the statute to allow a court to further postpone the stay for two reasons. As a textual matter, it demonstrates that Congress was fully cognizant of the distinction between the terms "shall" and "may." Because Congress used both terms in the same subsection, each term should be construed in accordance with its commonly accepted meaning.[5] *See Anderson*,

[5] While "[t]he court may postpone the effective date of the automatic stay . . . for good cause[,] [n]o postponement shall be permissible because of general congestion of the court's calendar." 18 U.S.C. § 3626(e)(3). Subsection (e)(3) further demonstrates that Congress was fully aware of the distinction between the terms "shall" and "may" and intended each term to be given its meaning in common parlance.



329 U.S. at 485 ("[W]hen the same Rule uses both 'may' and 'shall,' the normal inference is that each is used in its usual sense—the one act being permissive, the other mandatory.").

Most significantly, as a limited grant of discretion, subsection (e)(3) counsels against implying any greater exemption from the mandatory operation of the stay. As the Court has recognized, where Congress grants authority to do a thing a certain way, it implicitly prohibits the doing of the thing in any other way. *See Smith v. Stevens*, 77 U.S. (10 Wall.) 321 (1870); *United States v. Smith*, 499 U.S. 160, 167 (1991) (quoting *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980) ("Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in theabsence of a contrary legislative intent.")).

Furthermore, the "good cause" that justifies postponement of the stay, 18 U.S.C. § 3626(e)(3), is inclusive of the equitable considerations which the United States contends allow a court to suspend the automatic stay. *See* U.S. Pet 15. A showing that one is likely to suffer irreparable harm and to defeat a termination motion demonstrates "good cause." A court that has been presented with such a showing should be able to make the findings required to deny a termination motion within the ninety-day period, *see* 18 U.S.C. § 3626(b)(3), as the court is authorized to appoint a special master "to conduct hearings on the record and prepare proposed findings of fact." *Id.* § 3626(f)(1).

That Congress authorized an interlocutory appeal of "[a]ny order staying, suspending, delaying, or barring the operation of the automatic stay," 18 U.S.C. § 3626(e)(4), does not "impl[y] that district courts have authority to issue such orders." U.S. Pet. 16. Congress enacted PLRA in response to numerous instances of federal judicial overreaching. *See* House Report No. 104-21, at 25-27; 141 Cong. Rec. S 14626 (daily ed., Sept. 29, 1995) (Statements of Sens. Dole & Hatch). Given this record, Congress could reasonably anticipate that PLRA's reforms would be resisted by federal judges who would seek to circumvent the operation of the automatic stay either by declaring it unconstitutional[6] or by asserting—as the United States does—that the statute does not limit their equitable authority.

Indeed, as originally enacted, Section 3626(e) contained no provision for interlocutory review. *See* Pub. L. 104-134, Title I, § 101(a), 110 Stat. 1321-66. As Senator Abraham, who shepherded the 1997 amendment which added subsection 3626(e)(4), explained:

> Courts have also been avoiding the automatic stay by saying that it is impossible to comply with because it sets up an impossible timetable and that it is therefore unconstitutional. The Department of Justice meanwhile has contended that the stay is not really automatic at all, although no court has accepted that view.

[6] Administrators' attempts to invoke PLRA were greeted by numerous challenges on various constitutional grounds. *See, e.g., Dougan v. Singletary*, 129 F.3d 1424, 1425-27 (11th Cir. 1997); *Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649, 655-61 (1st Cir. 1997); *Gavin v. Branstad*, 122 F.3d 1081, 1084 (8th Cir. 1997); *Plyler v. Moore*, 100 F.3d 365, 368 (4th Cir. 1996). It was thus forseeable that the automatic stay amendment would likewise be subjected to challenges.



143 Cong. Rec. S 12269 (daily ed., Nov. 9, 1997).[7] Thus, subsection (e)(4) does not "impl[y] that district courts have authority to issue" orders suspending the automatic stay. U.S. Pet. 16. Rather, subsection 3626(e)(4) was enacted to ensure that decisions of courts which had invalidated the stay would be immediately appealable notwithstanding their interlocutory nature.

Furthermore, the United States mischaracterizes the history of PLRA when it states that "[a]t the same time that Congress provided for *appeal* of an order suspending the automatic stay, it also provided for review by *mandamus* of a court's failure to perform the duty to issue a prompt ruling on a motion for termination." U.S. Pet. 16. PLRA, however, originally contained no provision for appellate review other than by mandamus. Subsection (e)(4) was added to ensure that orders circumventing the stay would be treated as immediately appealable. Indeed, one month before subsection (e)(4) was proposed, the Fifth Circuit in *Ruiz v. Johnson* refused to review the district court's holding that the automatic stay provision was unconstitutional. *See* 178 F.3d at 388. Congress thus enacted the provision in direct response to decisions such as *Ruiz*.[8] Subsection (e)(4) therefore does not reflect

[7] The district court in *Ruiz v. Johnson* had invalidated the automatic stay provision as violative of separation of powers principles sometime in late 1996 or early 1997. *See Ruiz v. Johnson*, 178 F.3d 385, 388 (5th Cir. 1999). Moreover, in *Hadix v. Johnson*, the federal courts for both the Eastern and Western Districts of Michigan had invalidated the automatic stay as violative of separation of powers principles and the Due Process Clause of the Fifth Amendment. *See Hadix v. Johnson*, 144 F.3d 925, 932 (6th Cir. 1998) (citing *Hadix v. Johnson*, 933 F. Supp. 1360 (E.D. Mich. 1996); *Hadix v. Johnson*, 933 F. Supp. 1362 (W.D. Mich. 1996)).

[8] Given the limitations on interlocutory appeals under 28 U.S.C. § 1292(a)(1), a stay of the stay was likely not properly appealable without explicit Congressional authorization. While a stay might well be viewed as having "the practical effect" of continuing an

Congress' "recognition that an order suspending the automatic stay is within the authority of a district court," U.S. Pet. 16-17, or imply that district courts have authority to invoke general equitable principles to stay the stay beyond the ninety-day time period.[9]

---

injunction, *Carson v. American Brands, Inc.*, 450 U.S. 79, 83 (1981), it is unlikely that prison officials could convince federal courts that the order, which in practical effect results in requiring officials to maintain the status quo, would have the " 'serious, perhaps irreparable, consequence,' that is a prerequisite to appealability under § 1292(a)(1)." *Id.* at 85.

[9] The United States asserts that "[t]he court of appeals attempted to explain the provision for appellate review as a mechanism for ensuring prompt reversal of all orders suspending the automatic stay," to suggest that "[i]f that were Congress's intent . . . it would have provided for appellate correction through mandamus." U.S. Pet. 16. Contrary to the suggestion of the United States, the court of appeals viewed the interlocutory appeal provision as providing a mechanism for prompt resolution of the constitutionality of the automatic stay. As the court explained, "[t]he drafters of the PLRA realized that they were skating close to the line in (e)(2), and they wanted to ensure that the issue that is now before us could be resolved in an interlocutory appeal." Pet. App. 23a. As explained above, this view is amply supported by the history of § (e)(4), which demonstrates that it was enacted in response to several decisions holding § (e)(2) unconstitutional.

The United States' contention that Congress would have provided for mandamus as the method to "ensur[e] prompt reversal of all orders suspending the automatic stay," U.S. Pet. 16, is irreconcilable with the nature of mandamus. Mandamus is an extraordinary remedy and "should be resorted to only where appeal is a clearly inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 259-60 (1947). "[T]he party seeking mandamus has 'the burden of showing that its right to issuance of the writ is "clear and indisputable."' " *Will v. United States*, 389 U.S. 90, 96 (1967) (quoting *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 384 (1953) (quoting *United States v. Duell*, 172 U.S. 576, 582 (1899))). Furthermore, "mandamus is governed by equitable considerations and is to be granted only in the exercise of sound discretion." *Whitehouse v. Illinois Cent. R.R. Co.*, 349 U.S. 366, 373 (1955). Providing a remedy of mandamus to review orders staying the stay would thus lead to the same problems Congress sought to rectify in enacting PLRA.



In sum, under Congress' carefully crafted scheme a federal court can continue in force an existing decree for up to ninety days without making any further findings; it can renew the decree by making the findings which are constitutionally required to support it. Adopting the United States' construction of the automatic stay provision would result in the paradox that preliminary injunctive relief awarded subsequent to PLRA's enactment "shall automatically expire . . . 90 days after its entry" absent a court's making the required findings, 18 U.S.C. § 3626(a)(2), but a pre-existing decree could continue indefinitely without findings.[10] This makes little sense given that a district court will, in most cases, already have substantial knowledge of the circumstances which led to an existing decree and have less need for additional time to make the findings necessary to support the denial of a termination motion. *See* 18 U.S.C. § 3626(b)(3). That section 3626(f)(1) authorizes the court to appoint a special master "to conduct hearings on the record and prepare proposed findings of fact" demonstrates that Congress meant what it said—that if the court does not make the required findings within the ninety-day period, the decree must be suspended.[11] Indeed, motions for preliminary injunctive relief are frequently consolidated with accelerated trials on the merits. Charles A. Wright &

---

[10] Adopting the United States' position would likely lead to similar attempts to circumvent the plain meaning of section 3626 (a)(2)'s command that "[p]reliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1)."

[11] The automatic stay operates only until "the court enters a final order ruling on the motion." 18 U.S.C. § 3626(e)(2)(B). Where the unconstitutional conditions which prompted a decree no longer exist, there is no justification for requiring officials to continue to comply with its terms. Where conditions still violate the Constitution, the court will deny the motion to terminate the decree.

Arthur Miller, *Federal Practice & Procedure* § 2950, at 233 (1982).

It is likewise hard to see what purpose is served by allowing federal courts to stay the stay even if such an order is subject to traditional equitable standards. While the prisoners would have to show "a substantial likelihood of ultimate success on the merits," *Moore's Federal Practice*, § 65.22[1], at 65-52, there will still be many cases in which the State prevails after a trial. The State will, however, be unable to obtain redress for the harm it suffers where an injunction is maintained even after the violations have been corrected.

Moreover, where violations of federal law have not been remedied, the prisoners are not required to wait until the State files a termination motion to seek additional relief. Prisoners retain the right to secure compliance with a valid decree at all times and to bring to the court's attention new violations of federal law. There is thus no need for courts to stay the stay. Allowing courts to do so would remove the incentive for prompt decisionmaking which the statute creates.

This case amply demonstrates why Congress meant what it said. Here, the State moved for termination in June 1997. Today, nearly three years later, the district court still has not ruled on the State's motion. *See* Pet. App. 36a. Adopting the United States' reading would thus serve neither the interests of the State nor of the prisoners.[12] In short, it would render the statute precatory much as the panel below ultimately did. *See* Pet.

[12] Nor do federal courts need the authority to stay the stay to protect prisoners against stalling tactics. As Judge Easterbrook explained, "Courts can foil delaying maneuvers by imposing sanctions on parties that fail to cooperate in discovery, *see* Fed. R. Civ. P. 37, and by drawing adverse inferences about missing evidence. The inference then could support a finding under § 3626(b)(3)." Pet. App. 38a.



App. 30a. The Court should reject this reading, which flies in the face of Section 3626's clear and unambiguous text.

### B. The Automatic Stay Provision Does Not Violate Separation Of Powers Principles

While the court of appeals correctly construed section 3626(e), it erred in holding that the automatic stay provision violates separation of powers principles. In the court of appeals' view, subsection (e) violates these principles for two reasons. First, "[i]t strips from the court the authority to decide whether the status quo . . . should be continued or modified pending the court's decision on the immediate termination petition." Pet. App. 25a. According to the court, " 'the Framers crafted [Article III] . . . with an expressed understanding that it gives the Federal Judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy.' " *Id.* at 29a (quoting *Plaut v. Spendthrift Farm Inc.*, 514 U.S. 211, 218-19 (1995)). In the court of appeals' view, "(e)(2) places the power to review judicial decisions outside of the judiciary: it is a self-executing legislative determination that a specific decree of a federal court . . . must be set aside at least for a period of time, no matter what the urgency of keeping it in place." *Id.* According to the court below, "[t]his amounts to an unconstitutional intrusion on the power of the courts to adjudicate cases." *Id.*

Second, the court of appeals reasoned "that (e)(2) violates the principle articulated in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871)." *Id.* In the court's view, the automatic stay unconstitutionally prescribes a rule of decision in a pending case because for the period during which the termination motion is pending, "the statute does mandate a particular rule of decision: the prospective relief must be terminated." *Id.* at 30. Ac-

cording to the court, "this falls comfortably within the rule of *Klein*, and as such, it exceeds the power of the legislative branch." *Id.*

Neither of these rationales are persuasive. The separation of powers does not render Congress powerless to respond if district judges exceed their equitable jurisdiction. To the contrary, the Constitution expressly gives Congress the authority to regulate the equitable jurisdiction of the lower federal courts. As Article III, Section 1, states: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

"There can be no question of the power of Congress . . . to define and limit the jurisdiction of the inferior courts of the United States." *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938). The Court has thus recognized that "[t]he Congressional power to ordain and establish inferior courts includes the power 'of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.'" *Lockerty v. Phillips*, 319 U.S. 182, 187 (1943) (quoting *Cary v. Curtis*, 44 U.S. (3 How.) 236, 245 (1845)). The Court has further explained that:

> Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated



> cases, but it requires an act of Congress to confer it. And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part . . . .

*Kline v. Burke Const. Co.*, 260 U.S. 226, 234 (1922) (citations omitted).

Congress has exercised its power to restrict the exercise of the equity jurisdiction in various ways. First, it can prohibit the federal courts from exercising equitable powers over entire categories of cases, as it did in the Anti-Injunction Act, enacted in 1793. *See* Act of Mar. 2, 1793, § 5, 1 Stat. 335 (now codified at 28 U.S.C. § 2283) (limiting federal courts' authority to enjoin state court proceedings). *See also* 28 U.S.C. § 1342 (Johnson Act) (limiting federal district court authority to enjoin state public utility rate orders); 28 U.S.C. § 1341 (Tax Injunction Act) (limiting federal district court authority to enjoin the collection of state taxes).

Second, Congress can exercise its constitutional power to limit the authority of federal district courts to issue interlocutory injunctions. *See* Richard H. Fallon *et al.*, *Hart and Wechsler's The Federal Courts And The Federal System* 1212 (4th ed. 1996) (discussing enactment of since-repealed 28 U.S.C. § 2281, which created three-judge district courts in response to "the particular abuses of *ex parte* restraining orders and interlocutory injunctions" in the aftermath of *Ex Parte Young*, 209 U.S. 123 (1908)).

In the Emergency Price Control Act of 1942, 56 Stat. 23, Congress "vest[ed] jurisdiction to grant equitable relief exclusively in the Emergency Court [of Appeals] and in" this Court, removing from all other courts equitable authority to stay or enjoin the administrator's regulations. *Lockerty*, 319 U.S. at 186-87. The Act also prohibited

all interlocutory injunctive relief. *See Yakus v. United States*, 321 U.S. 414, 428 (1944).

*Yakus* rejected a challenge to the latter prohibition. The Court noted that "[t]he award of an interlocutory injunction by courts of equity has never been regarded as strictly a matter of right, even though irreparable injury may otherwise result to the plaintiff." *Id.* at 440. The Court further observed that "where an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff." *Id.* According to the Court, "[t]his is but another application of the principle . . . that 'Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.' " *Id.* at 441 (quoting *Virginian Ry. Co. v. System Federation*, 300 U.S. 515, 552 (1937)).

*Yakus* further makes plain that prohibiting interlocutory injunctive relief is fully within Congress' "power to define the jurisdiction of inferior federal courts," *id.* at 443, and that Congress does not violate separation of powers principles in doing so.

> In so doing [Congress] has done only what a court of equity could have done, in the exercise of its discretion to protect the public interest. What the courts do Congress can do as the guardian of the public interest of the nation in time of war. The legislative formulation of what would otherwise be a rule of judicial discretion is not . . . a usurpation of judicial functions.

*Id.* at 441-42.



Finally, Congress can impose time limits on the issuance of an equitable decree and require a federal court to make findings as a prerequisite to entering an injunction, as it did in the Norris-LaGuardia Act. *See Lauf*, 303 U.S. at 329-30. Under that act, a district court can issue a temporary restraining order which "shall be effective for no longer than five days and shall become void at the expiration of said five days." 29 U.S.C. § 107. Furthermore, "[n]o court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute . . . except after findings of fact by the court" as specified in the statute.[13] *Id.*

In *Lauf*, the Court reversed an injunction which the district court had granted "in the absence of findings which the Norris-LaGuardia Act makes prerequisites to the exercise of jurisdiction." *Id.* at 329 (footnote omitted). Observing that "[t]here can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States," the Court held that "[t]he District Court made none of the required findings save as to irreparable injury and lack of remedy at law. It follows that in issuing the injunction it exceeded its jurisdiction." *Id.* at 330 (citing *Kline*, 260 U.S. at 233, 234).

As the foregoing demonstrates, for more than two centuries it has been the accepted understanding that Article

---

[13] The Norris-LaGuardia Act was enacted to prohibit federal courts from issuing injunctive relief enforcing "yellow-dog" contracts. As Hart & Wechsler explains, "[a]t the time of [its] adoption, *Truax v. Corrigan*, 257 U.S. 312 (1921), had found state legislation similarly limiting employers' remedies to be unconstitutional." *Federal Courts*, at 363. The Court had previously "found a due process right to condition employment on an undertaking not to join a labor union or on non-membership." *Id.* at 364 (citing *Coppage v. Kansas*, 236 U.S. 1 (1915); *Adair v. United States*, 208 U.S. 161 (1908)).

III, Section 1, grants Congress broad power to limit the equitable jurisdiction of the lower federal courts. Contrary to the views of the court of appeals, sub-section (e)(2) cannot violate Article III as "an unconstitutional intrusion on the power of the courts to adjudicate cases," Pet. App. 29a, when text and history demonstrate that Article III, § 1, commits to Congress the power to regulate the lower federal courts' exercise of their equitable authority. And whether or not there are any other limits on Congress' power in this regard, PLRA's automatic stay provision is an unexceptionable exercise of this power.

Sub-section (e)(2) does not totally divest the federal courts of equity jurisdiction over prison condition cases although Congress clearly can do so. *Cf.* 28 U.S.C. § 2283. Nor does it deny a federal court the power to maintain the status quo following the State's filing of a termination motion, even though Congress clearly has the power to prohibit interlocutory relief. *See Yakus*, 321 U.S. at 441-42. Rather, the automatic stay allows a court to award the functional equivalent of interlocutory relief, subject to a temporal limitation. Sub-section (e)(2)'s grant of authority to a court to postpone the stay is analogous to the time limitations on equitable relief imposed on the federal courts in the Norris-LaGuardia Act, 29 U.S.C. § 107 (limiting TRO to five days), and the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 65 (limiting TRO to ten days and one extension), which as a practical matter require the court to conduct a hearing and make findings in order to impose further equitable relief through an injunction.

The court of appeals dismissed these time limits as "respond[ing] to the particular problems of *ex parte* proceedings." Pet. App. 24a. But that is beside the point. These rules demonstrate that Congress can impose time



limits on interim relief. Given that a total prohibition of interlocutory injunctive relief by Congress is not "a usurpation of judicial functions," *Yakus*, 321 U.S. at 442, neither is a time limit on a court's ability to preserve the status quo.[14]

No more persuasive is the court of appeals' contention that sub-section (e)(2) violates the structural independence of the judiciary because Article III "'gives the Federal Judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy.'" Pet. App. 29a (quoting *Plaut*, 514 U.S. at 218-19). The automatic stay provision does not, however, intrude on the power of the federal courts to decide a case. Indeed, the whole point of sub-section (e)(2) is to encourage the court to decide the case as the stay "end[s] on the date the court enters a final order ruling on the motion."[15] 18 U.S.C. § 3626(e)(2)(B). If conditions warrant continuing the injunction, the court must make the constitutionally required findings. *See id.* § 3626(b)(3).

That sub-section (e) directs the suspension of an existing decree where the judge has not rule in the allotted

---

[14] The court of appeals also stated that congressionally imposed time limits on executive agencies are "of little assistance" because "[w]here agencies are involved, the judgments . . . were not rendered by Article III courts but by entities that the Constitution places under the control of Congress." Pet. App. 27a. As explained above, the view implicit in this suggestion—that the federal courts are beyond the control of Congress—is refuted by the text of Article III and two centuries of congressional regulation of their jurisdiction and procedure.

[15] As the House Report explained:

> under current law, there is little that the parties can do to require or even encourage the judge to rule on their request. By providing that the prospective relief that is subject to the motion will be stayed if the motion is not decided promptly, judges will be motivated to decide the motions and avoid having the stay automatically take effect.

House Report at 26 (footnote omitted).

time does not render it an "unconstitutional intrusion on the power of courts to adjudicate cases." Pet. App. 29a. This argument ignores the settled principle that injunctive relief "should be no broader and last no longer than necessary to remedy the discrete constitutional violation." *Lewis*, 518 U.S. at 393 (Thomas, J., concurring). The "federal remedial power may be exercised 'only on the basis of a constitutional violation.'" *Milliken*, 418 U.S. at 738 (quoting *Swann*, 402 U.S. at 16). The requirement of a current constitutional violation is an "inherent limitation upon federal judicial authority." *Oklahoma City Bd. of Ed.*, 498 U.S. at 247 (quoting *Milliken*, 433 U.S. at 282). Just as "federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution," *id.* (quoting 433 U.S. at 282), so too do decrees which remain in effect once the State has remedied a constitutional violation.

Having found that state and local officials "are often handcuffed in their efforts to modify or terminate unnecessary and burdensome consent decrees . . . by judge[s] who stonewall and simply refuse, for many months or even years, to issue a ruling on a request for modification or termination," House Report at 26, Congress "has done only what a court of equity could have done, in the exercise of its discretion to protect the public interest." *Yakus*, 321 U.S. at 441-42. Congress could rightfully conclude that prison officials will act in good faith in seeking to terminate or modify existing decrees. Indeed, prison officials have little to gain and much to lose (such as damaged credibility and attorneys' fees) if they move to terminate when conditions continue to violate the Constitution.[16]

---

[16] It is erroneous to characterize the automatic stay as "a legislatively commanded, self-executing stay of an existing court order." Pet. App. 32a. *See also id.* at 29a; U.S. Pet. 17. Sub-section (e)(2) does not, by itself, stay all existing decrees in prison condition cases. Rather, it stays an existing decree only where a party has moved to modify or terminate. *See* 18 U.S.C. § 3626(e)(2). Furthermore, a court retains power to prevent the stay from going into effect either by postponing its effective date, *see id.* § 3626(e)(3), or by "enter[ing] a final order ruling on the motion." *Id.* § 3626(e)(2)(B). A court thus retains power to decide the case under the applicable substantive law.

Nor is § (e)(2) directed at any "specific decree." *See* Pet. App. 29a (describing § (e)(2) as "a self-executing determination that a specific decree of a federal court—here the decree addressing conditions at Pendleton—must be set aside").



"[W]here an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff." *Id.* at 440. Congress, as much as the courts, can weigh the equities and conclude that the continuance of injunctions which are unsupported by new findings causes undue harm to the public interest which outweighs the interest of prisoners. Requiring suspension of a decree when a court fails to make the constitutionally required findings is not a "usurpation of judicial functions" in violation of Article III. *Id.* at 442.

As for the court of appeals' other rationale, *Klein* is simply inapposite. "Whatever the precise scope of *Klein*, . . . its prohibition does not take hold when Congress 'amend[s] applicable law.'" *Plaut*, 514 U.S. at 218 (quoting *Robertson v. Seattle Audubon Soc.*, 503 U.S. 429, 441 (1992)). Indeed, it is well established that when Congress changes the applicable law, a court of equity cannot enforce "a continuing decree" but must give the new law effect. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 437 (1855). *See also Agostini v. Felton*, 117 S.Ct. 1997, 2006 (1997) ("A court errs when it refuses to modify an injunction or

consent decree in light of [significant] changes" in the law); *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 388 (1992) ("A consent decree must of course be modified if, as it later turns out, one or more of the obligations placed upon the parties has become impermissible under federal law."). Indeed, "[a] continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need." *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932).

If amending the substantive law applicable to a continuing injunction or consent decree does not violate the separation of powers, Congress surely can adopt procedures to protect the rights of parties who are entitled to the benefit of the new law. To conclude otherwise would allow the courts to frustrate the purpose of the underlying substantive law. The automatic stay provision manifests Congress' recognition that continued enforcement of structural decrees which impose obligations that exceed constitutional requirements places an undue burden on prison administrators and has potentially harmful consequences for public safety. Because administrators and the public would otherwise have no adequate remedy where a federal court continues an invalid injunction, Article III, Section 1, empowers Congress to protect the public interest by requiring a federal court to either rule or stay the decree.



## CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

RICHARD RUDA *
Chief Counsel
JAMES I. CROWLEY
STATE AND LOCAL LEGAL CENTER
444 North Capitol Street, N.W.
Suite 345
Washington, D.C. 20001
(202) 434-4850

* Counsel of Record for the *Amici Curiae*

February 3, 2000

Jan 28 2000 (9) (8)

Nos. 99-224 & 99-582

Supreme Court, U.S.
FILED
JAN 28 2000
CLERK

*In The*
*Supreme Court of the United States*

---

**JACK R. DUCKWORTH,**
*Petitioner,*

vs.

**RICHARD A. FRENCH,**
*Respondent.*

**UNITED STATES OF AMERICA,**
*Petitioner,*

vs.

**RICHARD A. FRENCH,**
*Respondent.*

---

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

---

# BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF THE PETITIONERS.

---

(List of Counsel on Inside Front Cover)

1500

*Of Counsel:*

RICHARD WEINTRAUB, ESQ.
National Sheriffs' Association
1450 Duke Street
Alexandria, Virginia 22314

*Counsel For Amici Curiae:*

WAYNE W. SCHMIDT, ESQ.
Executive Director
Americans for Effective
Law Enforcement, Inc.
5519 N. Cumberland Ave.
Suite 1008
Chicago, Illinois 60656
E-mail: AELE@aol.com

BERNARD J. FARBER, ESQ.
1126 West Wolfram
Chicago, Illinois 60657-4330
E-mail: bernfarber@aol.com

JAMES P. MANAK, ESQ.
**Counsel of Record**
421 Ridgewood Avenue
Suite 100
Glen Ellyn, Illinois 60137-4900
**Tele/Fax (630) 858-6392**
**E-mail: lelp@xnet.com**

## TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... ii

BRIEF OF *AMICI CURIAE* ..... 1

INTEREST OF *AMICI CURIAE* ..... 1

STATEMENT OF THE CASE ..... 2

SUMMARY OF ARGUMENT ..... 3

ARGUMENT ..... 5

THE AUTOMATIC STAY PROVISION OF THE PRISON LITIGATION REFORM ACT IS A PROPER MEASURE TO PREVENT MICRO-MANAGEMENT OF CORRECTIONAL FACILITIES. ..... 5

A. CONGRESS PROPERLY IMPOSED PROCEDURAL DEADLINES RELATING TO INJUNCTIVE RELIEF IN PRISONER CASES. ..... 5

B. THE AUTOMATIC STAY PROVISION OF THE PRISON LITIGATION REFORM ACT DOES NOT INTERFERE WITH THE JUDICIAL PROCESS. ..... 7

C. THE AUTOMATIC STAY PROVISION IS NEEDED TO PREVENT UNNECESSARY DELAY IN PRISON INJUNCTION PROCEEDINGS. . . . . 8

CONCLUSION . . . . . 12



## TABLE OF AUTHORITIES

**Cases** **Page**

*Abbott v. Thornburg*, 490 U.S. 401 (1989) . . . . . 10
*Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999) . 9
*French v. Duckworth, French and United States of America, intervenor-appellant*, 178 F.3d 437 (7th Cir. 1999) . . . . . *passim*
*French v. Owens*, 777 F.2d 1250 (7th Cir. 1985) . . . 8
*Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998) . 8, 9
*Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1991) . . . . . 9
*Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999) . . . . 9
*Turner v. Safley*, 482 U.S. 78 (1987) . . . . . 10
*United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871) . . . . . 3, 7

**Statutes**

18 U.S.C. § 3626(a)(1) . . . . . 5
18 U.S.C. § 3626(a)(2) . . . . . 6
18 U.S.C. § 3626(e)(2) . . . . . *passim*
18 U.S.C. § 3626(e)(3) . . . . . 6

**Congressional Materials**

141 Cong. Rec. S14,418 (1995) ..... 5
141 Cong. Rec. S14,419 (1995) ..... 5
Pub. L. No. 105-119, @ 123, 11 Stat. 2440, 2470 (1997) ..... 6



## BRIEF OF *AMICI CURIAE*

This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioners and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.[1]

## INTEREST OF *AMICI CURIAE*

**Americans for Effective Law Enforcement, Inc. (AELE),** as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various state and federal constitutions.

**AELE** has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal, and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

---

[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record; Bernard J. Farber, Esq.; and Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc., made the complete monetary contribution to the preparation and submission of this brief, without financial support from any source, directly or indirectly.

**The National Sheriffs' Association (NSA),** is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

*Amici* are national organizations that represent the interests of law enforcement and correctional officials who formulate and implement policy for detention facilities, jails, and prisons. Because of this, we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

## STATEMENT OF THE CASE

The United States Court of Appeals for the Seventh Circuit, *French v. Duckworth, French and United States of America, intervenor-appellant*, 178 F.3d 437 (7th Cir. 1999), held unconstitutional, as a violation of separation-of-powers, the "automatic stay" provision of the Prison Litigation Reform Act, codified at 18 U.S.C. § 3626 (e)(2). This provides that any motion to modify or terminate prospective relief in a prison conditions case operates as an automatic stay beginning on the thirtieth day after such a motion is made (which time period may be extended by an additional sixty days for good cause by the trial court). A panel of the Seventh Circuit ruled



that § 3626(e)(2) violated the principle articulated in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), that Congress does not have the power to impose a rule of decision for pending judicial cases, apart from its power to change the underlying applicable law.

## SUMMARY OF ARGUMENT

Congress, in enacting the Prison Litigation Reform Act, made a legislative determination that there should be an end to unnecessary and burdensome "micro-management" of correctional institutions by the courts. It changed the underlying applicable law concerning the instances in which injunctive relief could be granted, requiring findings that the relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the federal right. The procedural deadlines for judicial action on a timely motion to terminate existing prospective relief are just that–procedural, and do not dictate the result which the court entertaining the motion will reach in a particular case.

The "automatic stay" provision of the Act does not violate separation-of-powers or constitute undue interference by the other branches of government in the judicial process. It requires a finding of necessity and prevents relief predicated on superseded legal standards. Congress intended that courts should ordinarily defer to correctional officials for day-to-day decision making and the allocation of resources.

*Amici* believe that the upholding of this "automatic stay" provision is essential to ensure that injunctive relief that is ongoing actually is necessary to remedy ongoing violations of constitutional rights. Injunctive orders entered prior to the enactment of the Prison Litigation Reform Act may not, in many instances, be adequately based on judicial findings of constitutional violations and also may be overbroad in their scope. The procedural deadlines contained in the "automatic stay" provision of the Prison Litigation Reform Act serve as a safeguard to prevent prospective relief granted under now superseded legal standards, in some cases decades ago, from being continued for years or decades yet to come without judicial findings that such relief is appropriate under current law.

This Court has appropriately and increasingly recognized, in a variety of its recent decisions concerning prison litigation, that correctional officials faced with the already difficult task of administering and running detention facilities, jails, and prisons, should be granted substantial deference in the making of their day-to-day decisions and allocation of resources. The legal standards for injunctive relief enacted by Congress in the Prison Litigation Reform Act, along with the procedural deadlines which assist in enforcing them, are in line with the Court's deference to correctional officials, while still providing judicial remedies in those instances where prisoners' constitutional rights are violated.

Accordingly, *amici* urge this Court to reverse the ruling of the United States Court of Appeals for the Seventh Circuit, and uphold the constitutionality of 18 U.S.C. § 3626(e)(2).



## ARGUMENT

### THE AUTOMATIC STAY PROVISION OF THE PRISON LITIGATION REFORM ACT IS A PROPER MEASURE TO PREVENT MICRO-MANAGEMENT OF CORRECTIONAL FACILITIES.

### A. CONGRESS PROPERLY IMPOSED PROCEDURAL DEADLINES RELATING TO INJUNCTIVE RELIEF IN PRISONER CASES.

When Congress passed the Prison Litigation Reform Act in 1996, it very clearly made a legislative determination that federal courts had engaged, in some instances, in "micro-management" of correctional facilities. *See, e.g.*, 141 Cong. Rec. S14,419 (1995) (statement of Sen. Abraham) ("No longer will prison administration be turned over to Federal judges for the indefinite future for the slightest reason"); *id.* at S14,418 (statement of Sen. Hatch) ("I believe that the courts have gone too far in micro-managing our Nation's prisons.").

In the Act, Congress provided that injunctive relief should be granted only in cases where violations of federally protected rights were found and that such orders should be:

1. Narrowly drawn;
2. Limited in all cases to relief necessary to correct the violation of a federal right; and
3. Utilizing the "least intrusive means" necessary to correct the violation of the federal right.

18 U.S.C. § 3626(a)(1).

Recognizing that many correctional institutions

were already operating under existing injunctions, Congress also provided a mechanism for correctional administrators to seek termination of an outdated injunctive order which does not meet the current legal standard for grants of prospective relief as summarized above. Section 3626(a)(2) provides for the immediate termination of prospective relief upon a finding that it does not meet this standard, with the trial court able to deny such immediate termination upon entering written findings, based on the record, that the standard was met.

Congress evidently was also concerned about what would happen if a trial court did not hold a timely hearing to make a determination, one way or the other, about whether an existing injunctive order met the current legal standard. Accordingly, it adopted, in 18 U.S.C. § 3626(e)(2), the provision involved in this case, that a motion to terminate or modify an existing injunctive order would act as an automatic stay after no judicial action was taken for thirty days. In 1997 amendments to the Prison Litigation Reform Act, Congress provided that the trial court could postpone the effective date of this automatic stay "for not more than 60 days for good cause," but that "no postponement shall be permissible because of general congestion of the court's calendar." 18 U.S.C. § 3626(e)(3). *See* Pub. L. No. 105-119, @ 123, 11 Stat. 2440, 2470 (1997) (adding this language).

The Seventh Circuit panel has incorrectly interpreted these mere procedural guidelines to be improper Congressional interference with the judicial function. Yet these deadlines are no different from procedural deadlines properly imposed on the courts by statutes in many



other areas and upheld even when fundamental constitutional rights such as life, liberty, or property are involved. *See* Judge Easterbrook, joined by Judge Manion and Seventh Circuit Chief Judge Posner, dissenting from the denial of rehearing en banc by the Seventh Circuit, *French v. Duckworth*, 178 F.3d at 448-53.

## B. THE AUTOMATIC STAY PROVISION OF THE PRISON LITIGATION REFORM ACT DOES NOT INTERFERE WITH THE JUDICIAL PROCESS.

The Seventh Circuit panel ruled that the "automatic stay" provision violates the principle articulated in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), that Congress does not have the power to impose a rule of decision for pending judicial cases, apart from its power to change the underlying applicable law. **This concern is misplaced, as the "automatic stay" provision of the Prison Litigation Reform Act is entirely different**. It does not attempt to dictate to the trial judge what *result* to reach, prevent the holding of hearings, the consideration of evidence, the entering of findings, the issuance of orders on those findings, or attempt to remove jurisdiction from the federal courts.

In holding as it did, in Judge Easterbrook's view, the Seventh Circuit panel "has invented a right of the judicial branch to freedom from deadlines." *French v. Duckworth*, 178 F.3d at 453.

Whether or not the "automatic stay" provision is interpreted as preserving the equitable power of the courts to "stay the stay" in appropriate circumstances or

states absolute deadlines which cannot be modified, *see Hadix v. Johnson*, 144 F.3d 925, 946, (6th Cir. 1998) (equitable power to suspend automatic stay remains) and *French v. Duckworth*, 178 F.3d 437, 443 (7th Cir. 1999) (statute does not allow suspension of automatic stay by trial court), the provision, in stating procedural deadlines, does not violate separation-of-powers or constitute undue interference by the other branches of government in the judicial process.

C. THE AUTOMATIC STAY PROVISION IS NEEDED TO PREVENT UNNECESSARY DELAY IN PRISON INJUNCTION PROCEEDINGS.

Many injunctions in prison and jail cases were entered under now superseded legal standards, in some cases decades ago. Sometimes, these orders were entered without detailed findings that ongoing constitutional violations existed then–much less now–years later.

The immediate case is just one example of how litigation over prison conditions has been prolonged, and the dangers of not imposing some procedural deadlines to promote timely review. Prisoners in an Indiana correctional facility filed a class action lawsuit against the state complaining of prison conditions **almost three decades ago**. *French v. Duckworth*, 178 F.3d at 438. Some of the relief sought by the prisoners was granted in an injunction affirmed fifteen years ago in *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985), and the prison has operated under that injunction, as modified over time, ever since.

What happened in the instant case in more recent



years?

> Defendants sought termination of the decree by a motion in June 1997. Almost two years have passed, but the district judge has yet to take a single step toward acting on this request–and the last word of the panel's opinion is "affirmed." A process that is supposed to be rapid drags on with no end in sight."

*French v. Duckworth*, 178 F. 3d at 449 (Easterbrook, J., dissenting).

*Nor, unfortunately, is this case unique*. In *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998), the appeals court had to revisit an injunctive order against Michigan correctional officials which stemmed from litigation **begun in 1980.** *Hadix v. Johnson*, 144 F.3d at 930. In *Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999), the court considered whether to terminate federal consent orders that had governed Texas prisons for "**almost twenty-five years**." *Ruiz v. Johnson*, 178 F.3d at 387. In *Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999), a panel of the Seventh Circuit examined the status of injunctive orders against a county jail growing out of litigation **which began in 1972.**

When egregious violations of prisoner rights are found to be ongoing, no one would deny that injunctive relief may be appropriate. On the other hand, the extraordinary relief of injunction should be used only to cure actually present violations and should be terminated or modified in a timely manner when conditions or the underlying law change. Indeed, that is the essence of this Court's ruling in *Rufo v. Inmates of Suffolk County Jail*,

502 U.S. 367 (1991). Instead, in some instances, injunctive orders which once were found appropriate and necessary linger on **despite the passage of new generations of prisoners and correctional officials, despite changing prison conditions, and despite the lawful enactment of a new legal standard for injunctive relief**.

This Court has properly recognized, in a variety of its recent decisions concerning prison litigation, that correctional officials faced with the already difficult task of administering and running detention facilities, jails, and prisons, should be granted substantial deference in the making of their day-to-day decisions and allocation of resources. *See, e.g., Turner v. Safley*, 482 U.S. 78 (1987); *Abbott v. Thornburg*, 490 U.S. 401 (1989).

Prison and jail administrators must manage the housing, feeding, clothing, safety, medical and mental health care, exercise, recreation, telephone use, postal needs, personal funds, and personal property of prisoners. They must provide adequate access to the courts and counsel, access to religious worship, reasonable accommodation for prisoners with disabilities–along with rehabilitative programs such as work and education, counseling and other treatment for alcohol and drug dependency. With limited financial and personnel resources, administrators must manage inmates with violent propensities, and others who refuse to follow institutional rules of behavior.

The legal standards for injunctive relief adopted by Congress in the Act, along with the procedural deadlines for enforcing them, are in line with this Court's past



deference to correctional officials, while still providing judicial remedies in those instances where prisoners' constitutional rights are violated.

Accordingly, *amici* urge this Court to reverse the ruling of the United States Court of Appeals for the Seventh Circuit, and uphold the constitutionality of 18 U.S.C. Sec. 3626(e)(2).

## CONCLUSION

*Amici* urge this Court to reverse the decision of the court below on the basis of the precedents of this Court and sound judicial policy.

Respectfully submitted,

*Of Counsel:*

RICHARD WEINTRAUB, ESQ.
National Sheriffs' Association
1450 Duke Street
Alexandria, Virginia 22314

*Counsel For Amici Curiae*:

WAYNE W. SCHMIDT, ESQ.
Executive Director
Americans for Effective
Law Enforcement, Inc.
5519 N. Cumberland Ave.
Suite 1008
Chicago, Illinois 60656
E-mail: AELE@aol.com

BERNARD J. FARBER, ESQ.
1126 West Wolfram
Chicago, Illinois 60657-4330
E-mail: bernfarber@aol.com

JAMES P. MANAK, ESQ.
**Counsel of Record**
421 Ridgewood Avenue
Suite 100
Glen Ellyn, Illinois 60137-4900
**Tele/Fax (630) 858-6392**
**E-mail: lelp@xnet.com**

(10)

Feb 3 2000

(10) (9)

Supreme Court, U.S.
FILED
FEB 3 - 2000
CLERK

Nos. 99-224 and 99-582

# In the Supreme Court of the United States

CHARLES B. MILLER, ET AL., PETITIONERS

*v.*

RICHARD A. FRENCH, ET AL.

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD A. FRENCH, ET AL.

*ON WRITS OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE SEVENTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

SETH P. WAXMAN
*Solicitor General*
*Counsel of Record*

BILL LANN LEE
*Acting Assistant Attorney General*

BARBARA D. UNDERWOOD
*Deputy Solicitor General*

IRVING L. GORNSTEIN
*Assistant to the Solicitor General*

MARK L. GROSS
*Attorney*

*Department of Justice*
*Washington, D.C. 20530*
*(202) 514-2217*

4150

## QUESTIONS PRESENTED

Under the automatic stay provision of the Prison Litigation Reform Act of 1995, 18 U.S.C. 3626(e) (Supp. III 1997), the filing of a motion to terminate prospective relief shall operate as a stay during the period beginning 30 days after the filing of the motion and ending on the date the court rules on the motion. A court may postpone the effective date of the automatic stay for not more than 60 days for good cause, and any order staying, suspending, delaying, or barring the operation of the automatic stay (other than a postponement for not more than 60 days) is appealable under 28 U.S.C. 1292(a)(1). The questions presented are:

1. Whether a district court has authority to suspend the automatic stay and thereby preserve the status quo under traditional equitable standards.

2. Whether the automatic stay provision violates constitutional separation-of-powers principles.

## PARTIES TO THE PROCEEDING

The petitioner in No. 99-582 is the United States. The petitioners in No. 99-224 are Charles B. Miller, Superintendent of the Pendleton Correctional Facility, Edward I. Cohn, Commissioner, Indiana Department of Correction, and Herbert Newkirk, Regional Director, Indiana Department of Correction. The respondents are Richard A. French, Morris E. Dozier, Martin W. Bradberry, and Henry C. Jennings.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Opinion below | 1 |
| Jurisdiction | 1 |
| Statutory provisions involved | 2 |
| Statement | 2 |
| Summary of argument | 9 |
| Argument | 12 |
| The automatic stay provision does not displace a court's authority to preserve the status quo under traditional equitable standards and does not violate constitutional separation-of-powers principles | 12 |
| A. Absent clear and unequivocal language, an Act of Congress should not be interpreted to strip a court of its traditional authority to preserve the status quo | 13 |
| B. The automatic stay provision does not preclude a court from issuing an order to preserve the status quo in appropriate circumstances | 17 |
| C. Other provisions of the act show that the automatic stay provision does not foreclose equitable relief | 20 |
| D. Interpreting the automatic stay provision to preserve a court's equitable authority furthers the PLRA's general purposes and is consistent with Congress's general practice | 24 |
| E. Interpreting the automatic stay provision to permit a court to maintain the status quo under traditional equitable standards avoids a serious constitutional question | 27 |
| Conclusion | 38 |

## TABLE OF AUTHORITIES


Cases: Page

*Benjamin* v. *Kerik*, 172 F.3d 144 (2d Cir.), cert. denied, 120 S. Ct. 72 (1999) ..... 32
*Berwanger* v. *Cottey*, 178 F.3d 834 (7th Cir. 1999) ..... 32
*Califano* v. *Yamasaki*, 442 U.S. 682 (1979) ..... 14, 17
*Doran* v. *Salem Inn, Inc.*, 422 U.S. 922 (1975) ..... 19, 21, 22
*Dougan* v. *Singletary*, 129 F.3d 1424 (11th Cir. 1997), cert. denied, 118 S. Ct. 2375 (1998) ..... 32
*Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568 (1988) .... 30
*French* v. *Owens*, 538 F. Supp. 910 (S.D. Ind. 1982), aff'd in part, 777 F.2d 1250 (7th Cir. 1985), cert. denied, 479 U.S. 817 (1986) ..... 5
*Gavin* v. *Branstad*, 122 F.3d 1081 (8th Cir. 1997), cert. denied, 118 S. Ct. 2374 (1998) ..... 32
*Grupo Mexicano de Desarrollo* v. *Alliance Bond Fund, Inc.*, 119 S. Ct. 1961 (1999) ..... 13
*Hadix* v. *Johnson*, 133 F.3d 940 (6th Cir.), cert. denied, 118 S. Ct. 2368 (1998) ..... 32
*Hadix* v. *Johnson*, 144 F.3d 925 (6th Cir. 1998) ..... 7, 22, 29
*Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792) ..... 11, 28, 29, 30
*Hecht Co.* v. *Bowles*, 321 U.S. 321 (1944) ..... 14, 15, 18, 19
*Honig* v. *Doe*, 484 U.S. 305 (1988) ..... 15, 16, 18, 19
*Imprisoned Citizens Union* v. *Ridge*, 169 F.3d 178 (3d Cir. 1999) ..... 32
*Inmates of Suffolk County Jail* v. *Rouse*, 129 F.3d 649 (1st Cir. 1997), cert. denied, 118 S. Ct. 2366 (1998) ..... 32
*Jones* v. *United States*, 526 U.S. 227 (1999) ..... 30
*Morrison* v. *Olsen*, 487 U.S. 654 (1988) ..... 29
*Nichols* v. *Hopper*, 173 F.3d 820 (11th Cir. 1999) ..... 32
*Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89 (1984) ..... 5
*Pennsylvania* v. *The Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855) ..... 13, 30, 31, 32, 37





Cases—Continued: Page

*Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) ..... 7, 11, 27, 28, 29, 30, 31, 35, 36
*Plyler* v. *Moore*, 100 F.3d 365 (4th Cir. 1996), cert. denied, 520 U.S. 1277 (1997) ..... 32
*Porter* v. *Warner Holding Co.*, 328 U.S. 395 (1946) ..... 14
*Roche* v. *Evaporated Milk Ass'n*, 319 U.S. 21 (1943) ..... 23
*Ruiz* v. *Johnson*, 178 F.3d 385 (5th Cir. 1999) ..... 22, 29
*Scripps-Howard Radio Corp.* v. *FCC*, 316 U.S. 4 (1942) ..... 15, 27
*TVA* v. *Hill*, 437 U.S. 153 (1978) ..... 34
*United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871) ..... 8
*United States* v. *X-Citement Video, Inc.*, 513 U.S. 64 (1994) ..... 30
*Weinberger* v. *Romero-Barcelo*, 456 U.S. 305 (1982) ..... 34, 37
*Yakus* v. *United States*, 321 U.S. 414 (1944) ..... 19, 26, 27, 34

Constitution, statutes and rules:

U.S. Const.:
Art. I, § 8 (Bankruptcy Clause) ..... 35
Art. III ..... 7, 11, 28, 29, 32, 34, 35, 36, 37
Amend. XI ..... 5
Act of Mar. 23, 1792, ch. 11, 1 Stat. 243 ..... 28
1 Stat. 244 ..... 28, 33
Act of Feb. 28, 1798, ch. 17, 1 Stat. 324 ..... 28
Emergency Price Control Act of 1942, ch. 26, 56 Stat. 23 ..... 14
§ 204, 56 Stat. 33 ..... 14
§ 204(c), 56 Stat. 32 ..... 27
Judiciary Act of 1789, ch. 20, 1 Stat. 78 ..... 13
Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Tit. VIII, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (18 U.S.C. 3601 *et seq.*):
§§ 801-810, 110 Stat. 1321-66 to 1321-77 ..... 2
§ 802, 110 Stat. 1321-68 (18 U.S.C. 3626 note) ..... 3, 4, 5
§ 802(a)(1)(A), 110 Stat. 1321-66 (18 U.S.C. 3626(a)(1)(A) (Supp. III 1997)) ..... 2
§ 802(b)(1), 110 Stat. 1321-67 (18 U.S.C. 3626(b)(1) (Supp. III 1997)) ..... 3, 32

Statutes and rules—Continued: Page

§ 802(b)(2), 110 Stat. 1321-68 (18 U.S.C. 3626(b)(2) (Supp. III 1997)) ..... 2, 3, 24, 3
§ 802(b)(3), 110 Stat. 1321-68 (18 U.S.C. 3626(b)(3) (Supp. III 1997)) ..... 3, 24-25, 32
§ 802(e)(1), 110 Stat. 1321-68 (18 U.S.C. 3626(e)(1) (Supp. III 1997)) ..... 4, 23, 26
§ 802(e)(2), 110 Stat. 1321-68 (18 U.S.C. 3626(e)(2) (Supp. III 1997)) ..... 4, 9, 12, 17
§ 802(e)(3), 110 Stat. 1321-68 (18 U.S.C. 3626(e)(3) (Supp. III 1997)) ..... 4, 20
§ 802(e)(4), 18 U.S.C. 3626(e)(4) (Supp. III 1997) ..... 4, 22, 26
Speedy Trial Act of 1974, 18 U.S.C. 3161 *et seq.*:
18 U.S.C. 3161 ..... 8
18 U.S.C. 3161(h) ..... 36
18 U.S..C. 3162(a)(2) ..... 8, 36
11 U.S.C. 362(a)(1) ..... 34
11 U.S.C. 362(a)(2) ..... 8
11 U.S.C. 362(d) ..... 35
28 U.S.C. 1826(b) ..... 36
28 U.S.C. 2403(a) ..... 6
Fed. R. Civ. P.:
Rule 6(b) ..... 21
Rule 65(b) ..... 9, 35, 36

Miscellaneous:

104 Cong. Rec. H1562 (daily ed. Feb. 10, 1995) ..... 26
143 Cong. Rec. S12,268-12,269 (daily ed. Nov. 9, 1997) ..... 4, 26
Brian M. Hoffstadt, *Retaking the Field: The Constitutional Constraints On Federal Legislation That Displaces Consent Decrees*, 77 Wash. U. L. Q. 53 (1999) .... 33
H.R. 667, 104th Cong., 1st Sess. (1995) ..... 24
H.R. Conf. Rep. No. 405, 105th Cong., 1st Sess. (1977) ..... 4
H.R. Rep. No. 21, 104th Cong., 2d Sess. (1995) ..... 24, 26
Charles Alan Wright, et al., *Federal Practice and Procedure* (1995):
Vol. 4A ..... 21
Vol. 11A ..... 13

# In the Supreme Court of the United States

No. 99-224

CHARLES B. MILLER, ET AL., PETITIONERS

*v.*

RICHARD A. FRENCH, ET AL.

No. 99-582

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD A. FRENCH, ET AL.

*ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

### OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-23a)[1] is reported at 178 F.3d 437.

### JURISDICTION

The judgment of the court of appeals was entered on May 6, 1999. On July 29, 1999, Justice Stevens extended the time for filing a petition for a writ of

[1] Pet. App. refers to the appendix to the petition in No. 99-582.

certiorari to and including September 3, 1999, and on August 23, 1999, Justice Stevens extended the time for filing a petition to and including October 3, 1999. The petition for a writ of certiorari in No. 99-582 was filed on October 4, 1999 (Monday), and was granted on December 6, 1999. The petition in No. 99-224 was granted on the same day. This Court has jurisdiction under 28 U.S.C. 1254(1).

**STATUTORY PROVISIONS INVOLVED**

The relevant statutory provisions are reproduced in an appendix to the petition in No. 99-582. Pet. App. 40a-42a.

**STATEMENT**

1. In 1996, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, Tit. VIII, § § 801-810, 110 Stat. 1321-66 to 1321-77. The PLRA sets forth standards for the entry and termination of prospective relief in civil actions challenging conditions at prison facilities. Under the PLRA, prospective relief in prison conditions cases "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. 3626(a)(1)(A) (Supp. III 1997).

The PLRA provides for the "immediate termination" of relief that does not conform to that standard. 18 U.S.C. 3626(b)(2) (Supp. III 1997). It specifies that "[i]n any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal



right." 18 U.S.C. 3626(b)(2) (Supp. III 1997). That statutory mandate is subject to an important qualification. "Prospective relief shall not be terminated if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. 3626(b)(3) (Supp. III 1997). A party may seek immediate termination even if the relief "was originally granted or approved before * * * the date of the [PLRA's enactment]." 18 U.S.C. 3626 note (Supp. III 1997).

In addition to permitting a party to move for the immediate termination of decrees that were entered without the necessary findings, the PLRA also permits a party to move periodically for termination of any prison conditions decree, including a decree entered *with* the necessary findings. 18 U.S.C. 3626(b)(1) (Supp. III 1997). A party may seek termination two years after the entry of relief, one year after a denial of a motion to terminate, and, in the case of pre-PLRA decrees, two years after the date of the PLRA's enactment. *Ibid.* In April 1998, all pre-PLRA decrees became subject to periodic motions for termination. Motions that are based on the passage of time are subject to the same important limitation as motions that are based on the absence of necessary findings. The relief may not be terminated if the court finds that it remains necessary to correct a current and ongoing violation, and that it is narrowly drawn and the least intrusive means to correct the violation. 18 U.S.C. 3626(b)(3) (Supp. III 1997).

The PLRA establishes special procedures that govern motions for termination. A court is required to "promptly rule" on such a motion. 18 U.S.C. 3626(e)(1) (Supp. III 1997). When a court fails to issue a prompt ruling, mandamus "shall lie" as a remedy. *Ibid.* In addition, under the automatic stay provision, at issue here, the filing of a motion for termination "shall operate as a stay during the period * * * beginning on the 30th day after such motion is filed * * * and * * * ending on the date the court enters a final order ruling on the motion." 18 U.S.C. 3626(e)(2) (Supp. III 1997). A court may "postpone the effective date of an automatic stay * * * for not more than 60 days for good cause," but no postponement is permissible "because of general congestion of the court's calendar." 18 U.S.C. 3626(e)(3) (Supp. III 1997). Any order "staying, suspending, delaying, or barring the operation of the automatic stay" (other than an order postponing the automatic stay under the 60-day postponement provision) is subject to appellate review. Such an order "shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28." 18 U.S.C. 3626(e)(4) (Supp. III 1997).[2]

[2] As originally enacted, the automatic stay provision specified that "[a]ny prospective relief subject to a pending motion shall be automatically stayed," beginning on the 30th day after the filing of a motion for termination and ending on the date the court rules on the motion. § 802, 110 Stat. 1321-68. The 1997 Amendments to the PLRA revised the automatic stay provision to its current form. The 1997 amendments also added: (1) the provision authorizing mandamus when a court fails to rule promptly on a motion for termination, 18 U.S.C. 3626(e)(1) (Supp. III 1997); (2) the provision authorizing a court to postpone the automatic stay for 60 days for good cause, 18 U.S.C. 3626(e)(3) (Supp. III 1997); and (3) the provision authorizing an appeal from an order suspending the automatic stay. 18 U.S.C. 3626(e)(4) (Supp. III 1997). See H.R. Conf. Rep. No. 405, 105th Cong., 1st Sess. 132-133 (1997); 143 Cong. Rec. S12,269 (daily ed., Nov. 9, 1997) (remarks of Sen. Abraham). Congress specified that the 1997 amendments "shall take effect upon the date of the enactment of this Act and shall apply to pending cases." 18 U.S.C. 3626 note (Supp. III 1997).



2. In 1975, a class of inmates at the Pendleton Correctional Facility (respondents), filed suit against several Indiana prison officials (the State), alleging that the conditions at the facility violated state and federal law. After a trial, the district court found violations of state and federal law and entered a remedial order designed to correct those violations. *French* v. *Owens*, 538 F. Supp. 910 (S.D. Ind. 1982). While an appeal from that judgment was pending, this Court held in *Pennhurst State School and Hospital* v. *Halderman*, 465 U.S. 89 (1984), that the Eleventh Amendment deprives federal courts of jurisdiction to issue prospective relief against state officers based on state law. The Seventh Circuit remanded the case to the district court for reconsideration in light of *Pennhurst*.

On remand, the district court found that most of the state law violations also violated federal law. J.A. 27-42. The district court also issued an amended remedial order that took into account improvements that had been made at the facility. J.A. 21-26. The Seventh Circuit affirmed in part and vacated in part. *French* v. *Owens*, 777 F.2d 1250 (1985). It upheld the provisions of the district court's order addressing extreme overcrowding, double celling, improper use of mechanical restraints, inadequate medical care, unsanitary kitchen services, and insufficient staffing; it vacated the provisions addressing exercise and recreation, fire and safety, and protective custody. *Id.* at 1258. The parties

resolved the remaining issues through joint stipulations. J.A. 45-47.

3. In 1997, the State filed a motion under the PLRA for termination of the district court's remedial orders. J.A. 49-51. The State argued that it was entitled to termination of those orders because they did not contain any finding that the relief is narrowly drawn, extends no further than necessary to correct the violation of respondents' constitutional rights, and is the least intrusive means to correct those constitutional violations. J.A. 46. The State's motion did not address whether the relief in the decree remained necessary to remedy a violation of federal law. J.A. 45-47.

Respondents filed a motion for a preliminary injunction to suspend the operation of the automatic stay and thereby maintain the status quo. J.A. 49-51. Finding that the automatic stay provision "is clearly unconstitutional," that respondents "were likely to succeed on the merits" of their challenge to the automatic stay, and that the State "would not be harmed by the entry of [a] preliminary injunction," the district court granted respondents' motion. Pet. App. 36a-37a. The court ordered that "there shall be no stay of prospective relief in this matter and the parties shall continue to comply with this Court's prior orders and judgments until further order of the Court." *Id.* at 37a.

The State appealed the order suspending the automatic stay, and the United States intervened in the appeal, pursuant to 28 U.S.C. 2403(a), to defend the constitutionality of the automatic stay provision. The United States argued that the automatic stay provision does not deprive a court of authority to suspend the automatic stay and thereby preserve the status quo in accordance with traditional equitable standards and that, when so construed, the automatic stay provision



does not violate constitutional separation-of-powers principles.

4. The court of appeals affirmed the district court's order. Pet. App. 1a-23a. The court of appeals interpreted the automatic stay as a legislative command that a stay of prospective relief occur no later than 90 days after the filing of a motion for termination. *Id.* at 9a-12a. The court expressly rejected the view of the United States and of the Sixth Circuit in *Hadix* v. *Johnson*, 144 F.3d 925 (1998), that a court has authority to suspend the automatic stay and thereby preserve the status quo in accordance with traditional equitable standards. Pet. App. 9a-13a. The court noted that the statutory text refers to the stay as "automatic," provides that the filing of a motion for termination "shall" operate as a stay, and "specifie[s] not only a clear starting point, but also the ending point for the stay." *Id.* at 12a. The court concluded that "[e]ven though we do not lightly assume that Congress meant to restrict the equitable powers of the federal courts, we find it impossible to read this language as doing anything less than that." *Ibid.*

The court then ruled that the automatic stay provision "violates the separation of powers principle because it is a direct legislative suspension of a court order." Pet. App. 18a-19a. The court noted that in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 218-219 (1995), this Court stated that Article III "gives the Federal Judiciary the power, not merely to rule on cases, but to decide them, subject to review only by superior courts in the Article III hierarchy." Pet. App. 19a (emphasis omitted). The court of appeals concluded that the automatic stay provision violates that principle because it "places the power to review judicial decisions outside of the judiciary: it is a self-executing legislative

determination that a specific decree of a federal court * * * must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place." *Ibid.*

The court of appeals also concluded that the automatic stay provision violates the separation-of-powers principle established in *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871). Pet. App. 19a-20a. The court characterized *Klein* as holding that "Congress does not have the power to impose a rule of decision for pending judicial cases, apart from its power to change the underlying applicable law." *Id.* at 20a. The court concluded that the automatic stay provision "falls comfortably within the rule of *Klein*," because it mandates that prospective relief must be terminated during the pendency of the case. *Ibid.*

A majority of the judges in regular active service did not vote to hear the case en banc. Pet. App. 23a n.3. Judge Easterbrook (joined by Chief Judge Posner and Judge Manion) dissented from the denial of rehearing en banc. *Id.* at 23a-35a. The dissenters agreed with the panel that a district court does not have authority to suspend the automatic stay and thereby preserve the status quo under traditional equitable standards. *Id.* at 23a. The dissenters concluded, however, that the automatic stay provision, as so construed, does not violate separation-of-powers principles.

The dissenters disagreed with the panel's conclusion that the automatic stay provision unconstitutionally interferes with a court's ability to adjudicate a case. Pet. App. 26a-30a. In their view, the automatic stay provision simply "goads" courts to rule promptly on the merits of a motion for termination, *id.* at 28a, and the Constitution does not give courts an immunity from deadlines, *id.* at 28a-29a. The dissenters also disagreed



with the majority's conclusion that the automatic stay provision violates the rule in *Klein*. They reasoned that the automatic stay provision does not mandate a rule of decision without a change in the underlying law, but simply stays prospective relief until the court determines whether that relief complies with the new standard set forth in the termination provision. *Id.* at 30a-31a. The dissenters asserted that the panel's decision threatens the constitutionality of the automatic stay in bankruptcy, 11 U.S.C. 362(a)(2), Federal Rule of Civil Procedure 65(b)'s 10-day limit on temporary restraining orders, the Speedy Trial Act's requirement that an indictment must be dismissed if the case is not tried within the time limits set forth in the Act, 18 U.S.C. 3161, 3162(a)(2), and other federal statutes that set deadlines for judicial action. Pet. App. 31a-35a.

## SUMMARY OF ARGUMENT

Federal courts have always enjoyed the power to issue equitable relief to preserve the status quo pending the resolution of a case that is before them. The automatic stay provision's requirement that a motion for termination "shall operate as a stay," within 30 days of its filing, 18 U.S.C. 3626(e)(2) (Supp. III 1997), does not displace that traditional equitable authority. Particularly when read against the background principle that federal courts retain traditional equitable authority absent the clearest congressional command to the contrary, the automatic stay provision simply describes what will occur in the absence of judicial intervention. Thus, if the statutory period passes and the court does not intervene, a stay of the judgment automatically occurs. But the text of the automatic stay provision does not purport to limit the authority of a court to exercise its historic authority to preserve the status

quo when a termination motion cannot be resolved before the automatic stay takes effect and the traditional prerequisites for the issuance of equitable relief—irreparable injury and probability of success—have been satisfied.

That construction of the automatic stay provision is consistent with Congress's decision to limit good cause postponements to 60 days. Any factor affecting a court's ability to resolve the case within 30 days, other than general docket congestion, can justify a 60-day postponement. Congress's unwillingness to permit a postponement of the automatic stay under that generous good cause standard for more than 60 days does not imply that Congress intended to foreclose a court from suspending the automatic stay for a longer period of time when justified under the far more demanding standards for obtaining equitable relief.

The provision for appellate review of orders suspending the automatic stay further supports that conclusion. That provision manifests Congress's understanding that courts would have authority to issue a suspension order to preserve the status quo in an appropriate case, and gives prison officials a right to appellate review of such an order under the traditional abuse of discretion standard.

Interpreting the automatic stay to preserve a court's traditional authority to preserve the status quo is also consistent with Congress's purpose of preventing premature termination of relief that is necessary to remedy a violation of the Constitution. Because Congress's termination standard requires a court to assess the current conditions of institutions that it may not have examined for years, it will not always be possible for the court to resolve the merits of a termination motion before the automatic stay takes effect. In those



cases, when the parties opposing termination can show that they will suffer irreparable harm if the automatic stay goes into effect, and that they are likely to prevail on the termination motion, an order preserving the status quo helps to fulfill Congress's overall purposes.

Finally, interpreting the automatic stay to preserve a court's authority to maintain the status quo is supported by the principle that a statute should be interpreted to avoid a serious constitutional question if such a construction is possible. Under *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), Congress may not through retroactive legislation reopen a final judgment that is no longer subject to appeal, and under *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792), Congress may not directly suspend a court decision. If construed to foreclose equitable relief, the automatic stay provision would raise a serious Article III question under those decisions, because in cases in which there is insufficient time for a court to resolve the termination motion before the automatic stay takes effect, the automatic stay provision would legislatively effect the suspension of a final judgment without affording a court any role in the suspension decision. And it would do so even though the relief in the judgment may be necessary to remedy a violation of federal law. In contrast, if the automatic stay is interpreted to preserve a court's authority to maintain the status quo, a court would retain control over whether its judgment should be suspended, and the constitutional question would be avoided.

Although the question is a close one, we believe that, in light of Congress's broad power to affect prospective relief, its general authority to control the exercise of a court's equitable discretion, and the 90-day window for resolving the merits of a termination motion, a statute

that foreclosed equitable relief would still be constitutional. But because the statute does not clearly deprive courts of their traditional equitable powers, and because construing it to do so would raise a serious constitutional question, that construction should not be adopted.

## ARGUMENT

### THE AUTOMATIC STAY PROVISION DOES NOT DISPLACE A COURT'S AUTHORITY TO PRESERVE THE STATUS QUO UNDER TRADITIONAL EQUITABLE STANDARDS AND DOES NOT VIOLATE CONSTITUTIONAL SEPARATION-OF-POWERS PRINCIPLES

The "automatic" stay provision of the PLRA specifies that, after 30 days (with a possible extension to 90 days upon a showing of good cause), a motion to terminate prospective relief "shall operate as a stay." 18 U.S.C. 3626(e)(2) (Supp. III 1997). The court of appeals interpreted that provision to displace a court's traditional equitable authority to preserve the status quo pending the resolution of the merits of a matter before it. Based on that interpretation, the court of appeals invalidated the automatic stay provision on separation-of-powers grounds.

The court of appeals' interpretation of the automatic stay provision is incorrect. That provision does not affect a court's traditional equitable authority to preserve the status quo. Thus, if the party opposing a termination motion can show that a stay of the relief in outstanding decrees would cause irreparable injury, that the termination motion is likely to be defeated, and that the merits of the motion cannot be resolved before the automatic stay takes effect, a court has discretion to suspend the automatic stay and require prison officials



to comply with outstanding court orders until the court resolves the termination motion on the merits. When construed in that way, the automatic stay provision satisfies constitutional separation-of-powers principles.

#### A. Absent Clear And Unequivocal Language, An Act Of Congress Should Not Be Interpreted To Strip A Court Of Its Traditional Authority To Preserve The Status Quo

1. The Judiciary Act of 1789 conferred on federal courts jurisdiction over "all suits * * * in equity." Ch. 20, 1 Stat. 78. That statute gives federal courts "authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries." *Grupo Mexicano de Desarrollo* v. *Alliance Bond Fund, Inc.*, 119 S. Ct. 1961, 1968 (1999).

As one component of that authority, federal courts have always enjoyed the power to issue equitable relief to preserve the status quo pending a resolution of a case that is before them. 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2943, at 79 (1995); see *id.* §§ 2941, 2948, at 33, 133-134. That traditional authority includes the power to keep an outstanding injunction in place pending the resolution of a motion to dissolve the injunction. *Pennsylvania* v. *The Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 436 (1855).

Thus, absent the automatic stay provision, a court presented with a motion to terminate a under the PLRA would have authority to keep the decree in place and thereby preserve the status quo until the court resolves on the merits the question whether the decree should be terminated. The question presented in this

case is whether the automatic stay provision entirely removes that traditional authority in cases in which the merits of a termination motion cannot be resolved before the automatic stay takes effect.

2. The starting point for resolving that question is the firmly established principle that courts retain their traditional equitable authority unless Congress makes its intent to displace that authority absolutely clear. The Court has used several formulations to describe the requisite degree of clarity that is needed before an Act of Congress will be construed to displace traditional equitable authority. It has stated that, "[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." *Califano* v. *Yamasaki*, 442 U.S. 682, 705 (1979). It has said that, "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398 (1946). And it has stated that, when "Congress desire[s] to make * * * an abrupt departure from traditional equity practice," it makes "its desire plain." *Hecht Co.* v. *Bowles*, 321 U.S. 321, 330 (1944).

3. Several decisions of this Court are particularly instructive in illuminating the scope of that clear statement rule. In *Bowles*, the Court addressed whether the Emergency Price Control Act of 1942, ch. 26, 56 Stat. 23, required a court to issue relief once a violation of the Act was proven. The Act provided that, "upon a showing by the Administrator that [a] person has engaged or is about to engage in any * * * acts or practices [in violation of the Act], a permanent or temporary injunction, restraining order, or other order



*shall* be granted without bond." 56 Stat. 33 (emphasis added). Even though the literal language of the Act appeared to require courts to issue a compliance order in all cases in which a violation was established, the Court rejected that interpretation. 321 U.S. at 328-329. The Court explained that, "if Congress had intended to make such a drastic departure from the traditions of equity practice, an unequivocal statement of its purpose would have been made." *Id.* at 329.

In *Scripps-Howard Radio Corp.* v. *FCC*, 316 U.S. 4 (1942), the Court addressed whether a court of appeals had authority to issue a stay of an administrative order issued under the Communications Act of 1934, pending review of that order. One section of the Act provided for judicial review of certain orders in the district court and expressly authorized the district court to issue a temporary stay of the order under review. A companion section of the Act provided for review of other orders in the court of appeals and did not authorize the court of appeals to issue a stay of the order. *Id.* at 7-8. Although for those orders an ordinary application of the principle of *expressio unius est exclusio alterius* would have supported the conclusion that a court of appeals lacked authority to issue a stay, *id.* at 18 (Douglas, J. dissenting), the Court rejected that interpretation of the Act. The Court stated "that Congress would not, without clearly expressing such a purpose, deprive the Court of Appeals of its customary power to stay orders under review." *Id.* at 11. Since Congress had not explicitly denied the court of appeals authority to issue a stay, the court of appeals retained that historic power. *Id.* at 17.

Finally, in *Honig* v. *Doe*, 484 U.S. 305 (1988), the Court addressed whether a court had authority under the Education of the Handicapped Act to require a

change in a child's educational placement pending the resolution of litigation directed to determining where the child should be placed. The "stay put" provision of the Act specified that "[d]uring the pendency of any proceedings conducted pursuant to [the Act] unless the State or local education agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child." *Id.* at 312. The Court held that the language of the Act was "unequivocal" and precluded a school from expelling a child during the pendency of proceedings without the parent's consent, even if the child was dangerous. *Id.* at 323-324. At the same time, the Court held that the "stay put" provision "in no way purports to limit or preempt the authority conferred on courts [to issue equitable relief]," and that school officials could therefore seek injunctive relief to change the placement of a child in appropriate cases. *Id.* at 327-328. In such proceedings, the Court explained, the "stay put" provision "effectively creates a presumption in favor of the child's current educational placement which school officials can overcome only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others." *Id.* at 328.

In each of the above cases, the statute at issue could readily have been interpreted to displace traditional equitable authority if ordinary principles of statutory construction had been applied. Because none of the statutes explicitly prohibited courts from exercising traditional equitable authority, however, the Court held that such authority had not been displaced.



**B. The Automatic Stay Provision Does Not Preclude A Court From Issuing An Order To Preserve The Status Quo In Appropriate Circumstances**

1. The automatic stay provision states that the filing of a motion for termination "shall operate as a stay during the period * * * beginning on the 30th day after such motion is filed * * * and * * * ending on the date the court enters a final order ruling on the motion." 18 U.S.C. 3626(e)(2) (Supp. III 1997). Particularly when read against the background principle that federal courts retain traditional equitable authority "[a]bsent the clearest command to the contrary" (*Yamasaki*, 442 U.S. at 705), that statutory text does not deprive a court of authority to maintain the status quo by suspending the automatic stay and requiring observance of the terms of a decree until the merits of the termination motion can be resolved. Instead, it simply describes what will occur in the absence of judicial intervention. While otherwise disagreeing with our interpretation of the automatic stay provision, Judge Easterbrook described the provision in precisely those terms. He explained that the automatic stay provision "does not tell judges when, how, or what to do, but specifies what happens if the judge does not act." Pet. App. 26a (Easterbrook, J., dissenting from the denial of rehearing en banc).

Thus, if the statutory period passes and the court does not intervene, a stay of the judgment automatically occurs and it remains in effect until the termination motion is decided. Nothing in the language of the automatic stay provision, however, purports to limit the authority of a court to exercise its historic authority to preserve the status quo in those cases in which the termination motion cannot be resolved before the auto-

matic stay takes effect and the traditional standards for the issuance of equitable relief have been satisfied.

The automatic stay provision therefore operates in much the same way as the "stay put" provision at issue in *Honig*. Like the "stay put" provision, the automatic stay provision governs what happens during the pendency of litigation in the absence of judicial intervention. It does not, however, foreclose a court from exercising the traditional equitable authority it otherwise possesses.

The court of appeals interpreted the automatic stay provision to foreclose the exercise of equitable authority because the statutory text describes the stay as "automatic," states that the stay "shall" take effect, and specifies when the stay begins and ends. Pet. App. 12a. Those features of the statute, however, are perfectly consistent with the statute establishing what will happen in the absence of judicial intervention; they do not demonstrate that Congress took the extraordinary step of eliminating a court's historic authority to preserve the status quo. The "stay put" provision at issue in *Honig* took effect automatically, used the term "shall" and specified a starting point and ending point. 484 U.S. at 312. And the judicial relief provision at issue in *Bowles* used the term "shall." 321 U.S. at 326. The Court nonetheless concluded in both cases that the statutes at issue did not displace a court's traditional equitable authority. The same conclusion is warranted here.

2. The power to issue equitable relief to maintain the status quo does not imply the authority to do so in any and all circumstances. The automatic stay provision effectively creates a presumption in favor of changing the status quo by staying the judgment at the point at which the automatic stay is scheduled to take effect,



and requires those seeking to preserve the status quo to satisfy the traditional standards for obtaining equitable relief. Cf. *Honig*, 484 U.S. at 328 ("stay put" provision "effectively creates a presumption" in favor of the child's current placement which school officials must overcome).

The "traditional standard" for granting an injunction preserving the status quo until the merits of a case can be resolved requires the party seeking such relief "to show that in the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits." *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). In deciding whether to grant such relief, the court also weighs the harm to others and the public interest. *Yakus* v. *United States*, 321 U.S. 414, 440 (1944). A court is also required to exercise its traditional equitable authority in a way that is consistent with the larger policies of the Act. *Bowles*, 321 U.S. at 331. Based on those considerations, a party seeking to avoid the effect of the automatic stay ordinarily must show that (1) a stay of the outstanding orders would cause the party irreparable injury, (2) the termination motion is likely to be defeated, and (3) the merits of the motion cannot be resolved before the automatic stay takes effect. Once such a showing is made, a court has discretion to maintain the status quo by suspending the automatic stay and requiring prison officials to observe the terms of the decree until the merits of a termination motion can be resolved.[3]

---

[3] A court applying traditional equitable standards also would have discretion to maintain the status quo when discovery concerning present conditions is necessary to establish the traditional prerequisites for equitable relief and plaintiffs, although diligent, have been prevented from obtaining sufficient discovery because defendants have obstructed those efforts. Other similarly com-

### C. Other Provisions Of The Act Show That The Automatic Stay Provision Does Not Foreclose Equitable Relief

Related provisions of the Act also support the conclusion that Congress did not intend to strip a federal court of its authority to maintain the status quo under traditional equitable standards.

1. The provision appearing immediately after the automatic stay provision—the "good cause postponement provision"—specifies that "[t]he court may postpone the effective date of an automatic stay * * * for not more than 60 days for good cause," which does not include "general congestion of the court's calendar." 18 U.S.C. 3626(e)(3). If Congress had intended for the automatic stay provision to block judicial intervention under traditional equitable standards, Congress could easily have added another sentence to the good cause postponement provision stating that:

> Except as provided herein, a court shall have no authority to stay, suspend, delay, or bar the operation of the automatic stay.

The absence of such an express restriction confirms that the automatic stay provision does not displace judicial authority to preserve the status quo in accordance with traditional equitable standards when the merits of a termination motion cannot be resolved before the automatic stay takes effect.

Nor does the grant of authority to postpone the automatic stay under a *good cause* standard for no more than 60 days imply that a court lacks authority to suspend the automatic stay under *traditional equitable*

---

pelling equitable circumstances would also justify a suspension of the automatic stay to maintain the status quo.



*standards* for a longer period of time. Under the statutory good cause standard, any factor affecting a court's ability to resolve the merits of a termination motion within 30 days, other than general docket congestion, could justify a postponement of up to 60 days. Thus, a counsel's scheduling conflict, the unavailability of a witness, a general need for discovery, or a court's prior involvement in another pressing matter could all serve as a basis for a statutory postponement order. Compare Fed. R. Civ. P. 6(b) (authorizing a court to extend the deadlines imposed by the Rules "for cause shown"); 4A Charles Alan Wright et al., *supra*, § 1165, at 475 (a party must demonstrate some justification for an extension of a deadline, but an application for an extension under Rule 6 will normally be granted absent bad faith or prejudice to the adverse party). In contrast, in order to obtain a suspension of the automatic stay under traditional equitable standards, a party ordinarily must show not only that the merits of the termination motion cannot be resolved before the automatic stay takes effect, but also that a stay of the court's orders would cause the party irreparable injury and that the party is likely to defeat the termination motion. *Doran*, 422 U.S. at 931.

Congress's unwillingness to permit a postponement of the automatic stay under a generous good cause standard for more than 60 days does not imply that Congress foreclosed a court from suspending the automatic stay when justified under the far more demanding standards for obtaining equitable relief. To the contrary, the fact that Congress has limited judicial authority in one respect implies that the court remains free to exercise the traditional authority that has not been restricted.

2. Significantly, Congress also provided for appellate review of orders "staying, suspending, delaying, or barring the operation of the automatic stay" (other than an order postponing the automatic stay under the 60-day postponement provision). 18 U.S.C. 3626(e)(4) (Supp. III 1997). Such orders "shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28." *Ibid.*

That appellate review provision further supports the conclusion that Congress did not intend to displace a court's authority to preserve the status quo under traditional equitable standards. As one court of appeals has explained, it is unlikely that Congress would have provided for appellate review of orders suspending the automatic stay "if the courts did not have the authority to issue such orders." *Hadix* v. *Johnson*, 144 F.3d 925, 938 (6th Cir. 1998). Thus, the most likely explanation for the appellate review provision is that "Congress understood that there would be some cases in which a conscientious district court acting in good faith would perceive that equity required that it suspend the (e)(2) thirty-day stay and Congress therefore permitted the district court to do so, subject to appellate review." *Ruiz* v. *Johnson*, 178 F.3d 385, 394 (5th Cir. 1999).

Congress's failure to provide any standard for review of orders suspending the automatic stay lends additional weight to that conclusion. An appellate court ordinarily reviews an order affording equitable relief by determining whether the district court abused its discretion in its application of the traditional equitable factors. *Doran*, 422 U.S. at 931-932. Congress's failure to specify a different standard for review of orders suspending the automatic stay suggests that Congress intended for that traditional standard to be applied.



The alternative explanation for the appellate review provision—that it facilitates prompt reversal of all orders suspending the automatic stay—is unpersuasive. If that were Congress's intent, it could have provided for appellate correction through mandamus, which is the procedure that has traditionally been used "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche* v. *Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943). Congress manifested its awareness of the distinction between review by appeal and review by mandamus in the PLRA itself. At the same time that Congress provided for an *appeal* of an order suspending the automatic stay, it also provided for review by *mandamus* of a court's failure to perform its duty to issue a prompt ruling on a motion for termination. 18 U.S.C. 3626(e)(1) (Supp. III 1997). Thus, the appellate review provision reflects a recognition that a district court has authority to suspend the automatic stay under traditional equitable standards, and gives prison officials a right to an appellate determination on whether such an order conforms to those standards.[4]

---

[4] The court of appeals concluded that Congress may have enacted the appellate review provisions to facilitate appeals from orders invalidating the automatic stay provisions on constitutional grounds. While that may have been one of Congress's purposes, nothing in the text of the Act suggests that facilitating appeals from constitutional rulings was Congress's exclusive purpose.

### D. Interpreting The Automatic Stay Provision To Preserve A Court's Equitable Authority Furthers The PLRA's General Purposes And Is Consistent With Congress's General Practice

1. Interpreting the automatic stay provision to preserve a court's authority to maintain the status quo under traditional equitable standards is also consistent with the delicate balance that Congress sought to strike when it enacted the PLRA. The predecessor to the bill that ultimately became law provided that "in any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief, if the relief was approved or granted in the absence of a finding by the court that prison conditions violated a federal right." H.R. 667, 104th Cong., 1st Sess. § 301(b) (1995); H.R. Rep. No. 21, 104th Cong., 1st Sess. 25-26 (1995). That bill did not require any analysis of whether the relief was in fact necessary to remedy a violation of a federal right. *Ibid.*

The bill Congress enacted contains a provision that is similar to the predecessor bill. That provision requires termination of any decree "approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(b)(2) (Supp. III 1997). Unlike the predecessor bill, however, the bill Congress enacted contains an important qualification. It provides that "[p]rospective relief shall not be terminated if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the



violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. 3626(b)(3) (Supp. III 1997).

That change is significant. In the bill it enacted, Congress sought to balance two objectives. It sought to facilitate the *prompt* termination of relief that is *not* necessary to remedy a violation of a federal right. At the same time, however, it also sought to prevent *premature* termination of relief that *is* necessary to remedy a violation of a federal right. Those dual purposes are best accommodated when a court has authority to preserve the status quo beyond 90 days in the cases in which those opposing the termination motion can show that a stay of relief will cause irreparable injury, the termination motion is likely to be defeated, and the termination motion cannot be resolved on the merits before the automatic stay takes effect.

That is particularly true in light of the standard Congress established for deciding whether prospective relief should be terminated—whether the relief remains necessary to remedy a violation of a federal right. That inquiry necessarily requires a court to assess the current conditions of facilities that it may not have examined for years. When the relief applies to a single institution, it may be possible to resolve the merits of the motion before the automatic stay becomes effective. But when the relief affects all or most state institutions, as it does in several States, it may be unrealistic to expect that the inquiry can be completed before the automatic stay takes effect. It would frustrate Congress's intent to avoid premature termination of relief that is necessary to remedy a violation of federal law to read into the automatic stay provision an

unstated intent to displace entirely a court's historic authority to maintain the status quo in those cases.

Nor does recognition of such authority undermine Congress's purpose of ensuring prompt termination of relief that is not necessary to remedy a violation of a federal right. In those cases in which a district court suspends the automatic stay without adequate justification, prison officials may obtain appellate review of that decision under 18 U.S.C. 3626(e)(4) (Supp. III 1997). And in those cases in which the district court's suspension of the stay is justified, but the district court fails to decide the merits of the termination motion with "reasonable promptness," prison officials may obtain a writ of mandamus to compel a prompt determination. 18 U.S.C. 3626(e)(1) (Supp. III 1997).[5]

2. Congress has a long tradition of respecting the authority of courts to exercise traditional equitable authority to preserve the status quo. Congress has rarely stripped courts of that authority, and when it has done so, it has done so in unmistakable terms. For example, the statute at issue in *Yakus*, 321 U.S. at 437-443, expressly provided that "the court shall have the

[5] The limited legislative history of the automatic stay provision is largely unilluminating on the question presented in this case. That history suggests that the automatic stay provision was intended to encourage district courts to rule promptly on motions for termination. 143 Cong. Rec. S12,268 (daily ed. Nov. 9, 1997) (statement of Sen. Abraham) (amended automatic stay provision); H.R. Rep. No. 21, 104th Cong., 1st Sess. 26 (1995) (original provision); 104 Cong. Rec. H1562 (daily ed. Feb. 10, 1995) (statement of Rep. Canady) (same). Nothing in the legislative history suggests that Congress intended to displace a court's historic authority to maintain the status quo in those cases in which a motion for termination could not be resolved before the automatic stay was scheduled to take effect and plaintiff was able to establish the traditional prerequisites for equitable relief.



powers of a district court with respect to the jurisdiction conferred on it by this Act; except that the court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order" issued under the Act. Emergency Price Control Act of 1942, ch. 26, § 204(c), 56 Stat. 32.

That statute demonstrates that when Congress wants to displace a court's traditional equitable authority to maintain the status quo, it knows how to select language that is suitable to the task. Congress did not enact such language here. Under the exacting standards established by this Court, and given the absence of language comparable to that used in the statute at issue in *Yakus*, the automatic stay provision should not be interpreted to displace a court's authority to issue equitable relief to maintain the status quo. See *Scripps-Howard Radio*, 316 U.S. at 17 ("Where Congress wished to deprive the courts of this historic power [to maintain the status quo pending appeal], it knew how to use apt words—only once has it done so and in a statute born of the exigencies of war.").

### E. Interpreting The Automatic Stay Provision To Permit A Court To Maintain The Status Quo Under Traditional Equitable Standards Avoids A Serious Constitutional Question

1. In *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), the Court invalidated an Act of Congress that required federal courts to reopen certain cases that were dismissed as time-barred if the cases would have been timely filed under a somewhat longer statute of limitations. The Court held that Congress lacks authority under the Constitution to enact retroactive legislation that commands a federal court to reopen a final

judgment no longer subject to appellate review. *Id.* at 218-219, 240. The Court explained that Article III "gives the Federal Judiciary the power, not merely to rule on cases, but to decide them, subject to review only by superior courts in the Article III hierarchy." *Id.* at 218-219 (emphasis omitted).

In *Plaut*, the Court also identified a related principle derived from *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792), "that Congress cannot vest review of the decisions of Article III courts in officials of the Executive Branch." 514 U.S. at 218. The Court indicated that the same underlying principle also precludes Congress from reviewing the decisions of Article III courts. The Court quoted with approval Judge Iredell's statement in *Hayburn's Case*, 2 U.S. (2 Dall.) at 413, that "no decision of any court of the United States can, under any circumstances, . . . be liable to a revision, *or even suspension*, by the Legislature itself, in whom no judicial power of any kind appears to be vested." *Plaut*, 514 U.S. at 226 (emphasis added).[6]

---

[6] *Hayburn's Case* involved the administration of a pension statute for disabled Revolutionary War veterans. Act of Mar. 23, 1792, ch. 11, 1 Stat. 243. Under that statute, circuit courts were directed to examine pension applicants to determine the nature and degree of their disability and to "transmit the result of their inquiry" to the Secretary of War, if "in their opinion, the applicant should be put on the pension list." 1 Stat. 244. The Secretary of War, in turn, was authorized to "withhold the name of such applicant from the pension list, and make report * * * to Congress," in any case in which he had "cause to suspect imposition or mistake." *Ibid.* *Hayburn's Case* became moot before this Court had occasion to address the constitutionality of the pension statute. See 2 U.S. (2 Dall.) at 409-410. Act of Feb. 28, 1798, ch. 17, 1 Stat. 324 (repealing challenged provision). In their capacity as circuit justices, however, five of the six Justices of this Court expressed the view that the statute was unconstitutional. The views of those Justices, which are collected in the report of *Hayburn's Case*, 2 U.S. (2 Dal.) at 410-414, "have since been taken to reflect a proper understanding of the role of the Judiciary under the Constitution." *Morrison* v. *Olsen*, 487 U.S. 654, 678 n.15 (1988).



A constitutional question arises under *Plaut* and *Hayburn's Case*, when prison officials file a motion to terminate a decree entered before the effective date of the PLRA, and there is insufficient time for a court to resolve the merits of the motion before the automatic stay takes effect. If the automatic stay provision were interpreted to displace a court's traditional authority to maintain the status quo in such cases, it would resemble a direct legislative suspension of a final judgment of an Article III court. Like a direct legislative suspension, it would legislatively effect the suspension of a final judgment without affording a court any role in the suspension decision. And it would do so even though the relief in the decree may remain necessary to remedy a violation of federal law. There is a serious constitutional question under *Plaut* and *Hayburn's Case* whether such legislation would encroach on the judicial function in violation of Article III.

In contrast, if the automatic stay is interpreted to permit a court to maintain the status quo under traditional equitable standards, the court retains control over whether its judgment should be suspended. As two courts of appeals have held, and the court of appeals in this case acknowledged, that interpretation thereby avoids any serious Article III question. *Ruiz*, 178 F.3d at 395; *Hadix*, 144 F.3d at 937; Pet App. 11a n.1; see *Plaut*, 514 U.S. at 231-232 (a legislative waiver of the res judicata effect of a final judgment does not raise a separation-of-powers concern when "[w]aiver [is] subject to the control of the courts themselves").

Interpreting the automatic stay provision to preserve such authority is therefore supported by the principle that a statute should be interpreted to avoid "serious constitutional problems," unless such a construction is "plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); see also *Jones* v. *United States*, 526 U.S. 227, 238-240 (1999); *United States* v. *X-Citement Video, Inc.*, 513 U.S. 64, 78 (1994).

2. We do not suggest that the automatic stay provision would be unconstitutional under *Plaut* and *Hayburn's Case* if construed to foreclose equitable relief, but rather that it would pose a substantial constitutional question not fully answered by existing precedents. Unlike the statute at issue in *Plaut*, the automatic stay provision concerns prospective relief only; and unlike the statute at issue in *Hayburn's Case*, the automatic stay provision does not authorize officers of a nonjudicial branch of government to review judgments in individual cases. Those distinctions, however, do not eliminate entirely the serious constitutional question that would be presented if the automatic stay provision were construed to foreclose equitable relief, because some of the concerns underlying *Plaut* and *Hayburn's Case* would remain.

a. Unlike the statute at issue in *Plaut*, which reopened claims for money damages, the automatic stay provision affects only prospective relief. 18 U.S.C. 3626(e)(2) (Supp. III 1997). That distinction is potentially significant, because under *Wheeling Bridge*, *supra*, Congress has substantial authority to enact legislation that affects the prospective relief in final judgments.

In *Wheeling Bridge*, the Court affirmed a judgment ordering a bridge to be removed, because the bridge



was too low for passing ships and therefore constituted a public nuisance. Congress then enacted a statute declaring the bridge a "lawful structure" and a "post road." The Court held that Congress did not have authority to alter the judgment to the extent that it awarded costs to the plaintiff. 59 U.S. (18 How.) at 431. The Court reached a different conclusion, however, with respect to the part of the judgment that required the bridge to be removed:

> But that part of the decree, directing the abatement of the obstruction, is executory, a continuing decree, which requires not only the removal of the bridge, but enjoins the defendants against any reconstruction or continuance. Now, whether it is a future existing or continuing obstruction depends upon the question whether or not it interferes with the right of navigation. If, in the mean time, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced.

*Id.* at 431-432. In *Plaut*, the Court reaffirmed *Wheeling Bridge*, stating that it had established that Congress may enact legislation that "alter[s] the prospective effect of injunctions entered by Article III courts." 514 U.S. at 232.

*Wheeling Bridge*, however, does not eliminate the serious constitutional question that would be presented if the automatic stay provision were interpreted to displace a court's traditional equitable authority. The legislation at issue in *Wheeling Bridge* did not purport to dissolve the injunction to remove the bridge by operation of law, but instead established a new legal regime under which the *Court* dissolved the injunction

after deciding that the injunction was no longer necessary to prevent a violation of federal law.

In that respect, the *Wheeling Bridge* legislation operated like the PLRA's termination provision, which is not at issue in this case. That provision does not purport to terminate a judgment by operation of law. Instead, it requires a court to terminate the prospective relief unless it finds that the relief remains necessary to remedy a violation of federal law. 18 U.S.C. 3626(b)(1), (2), and (3) (Supp. III 1997). As the courts of appeals have uniformly concluded, the termination provision therefore falls comfortably within Congress's authority under *Wheeling Bridge*, *supra*, to affect prospective relief. See *Berwanger* v. *Cottey*, 178 F.3d 834 (7th Cir. 1999); *Nichols* v. *Hopper*, 173 F.3d 820 (11th Cir. 1999); *Benjamin* v. *Kerik*, 172 F.3d 144 (2d Cir.) (en banc), cert. denied, 120 S. Ct. 72 (1999); *Imprisoned Citizens Union* v. *Ridge*, 169 F.3d 178 (3d Cir. 1999); *Hadix* v. *Johnson*, 133 F.3d 940 (6th Cir.), cert. denied, 118 S. Ct. 2368 (1998); *Inmates of Suffolk County Jail* v. *Rouse*, 129 F.3d 649 (1st Cir. 1997), cert. denied, 118 S. Ct. 2366 (1998); *Dougan* v. *Singletary*, 129 F.3d 1424 (11th Cir. 1997), cert. denied, 118 S. Ct. 2375 (1998); *Gavin* v. *Branstad*, 122 F.3d 1081 (8th Cir. 1997), cert. denied, 118 S. Ct. 2374 (1998); *Plyler* v. *Moore*, 100 F.3d 365 (4th Cir. 1996), cert. denied, 520 U.S. 1277 (1997).

The automatic stay provision, by contrast—if interpreted to foreclose equitable relief—would operate differently from the legislation at issue in *Wheeling Bridge* and the termination provision. Unlike those provisions, it would effect a suspension of the final judgment by operation of law, rather than through a judicial act, and it would do so even though the relief in the decree may remain necessary to remedy a violation of federal law. Thus, notwithstanding *Wheeling Bridge*,



that interpretation would raise a serious Article III question concerning the extent of Congress's power to interfere with the final judgments of Article III courts. See Brian M. Hoffstadt, *Retaking the Field: The Constitutional Constraints On Federal Legislation That Displaces Consent Decrees*, 77 Wash. U. L.Q. 53, 90 (1999) (Congress has authority under *Wheeling Bridge* to modify the law and require courts to modify decrees to the extent that they are inconsistent with the new law, "[b]ut when Congress declares an outstanding decree null and void, it may cross the line of permissible activity by negating a judicial order and encroaching upon the prerogative of the Judiciary to render dispositive judgments").

b. The statute at issue in *Hayburn's Case* provided that circuit courts would decide pension claims, and that the Secretary of War would then review the decisions and withhold relief when he suspected that the court had erred in its determination. Act of Mar. 23, 1972, ch. 11, 1 Stat. 244. The automatic stay provision does not authorize either Congress or the Executive branch to review judgments in particular prison conditions cases in order to determine whether the court erred in rendering its judgments.

That distinction, however, does not fully answer the separation-of-powers concern that would be raised if the automatic stay provision were interpreted to displace traditional equitable authority. The critical point, for separation of powers purposes, is that, in a certain class of cases, the automatic stay provision would still legislatively effect a suspension of a final judgment without affording a court any role in that decision. And it would do so even though the relief may be necessary to remedy a violation of federal law. Such a statute sufficiently resembles a direct legislative

suspension of a final judgment to raise serious Article III concerns.

3. We do not suggest that legislative interference with equitable authority necessarily and in all cases raises constitutional concerns. It is well established that Congress "may intervene and guide *or control* the exercise of the court's discretion." *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 313 (1982) (emphasis added). For example, in *Yakus*, the Court upheld legislation providing that a court could not enter a temporary restraining order or a preliminary injunction in a certain class of cases. 321 U.S. at 441-442. And in *TVA* v. *Hill*, 437 U.S. 153, 193-195 (1978), the Court held that Congress had authority to require a court to enjoin projects that threaten an endangered species. See *Romero-Barcelo*, 456 U.S. at 313-314 (reaffirming *Hill*). But neither of those cases raised the problem of legislative interference with a final judgment that is no longer subject to appeal. Moreover, in both of those cases Congress mandated that a court either exercise or refrain from exercising its discretion in a particular way. In neither case did Congress attempt to bypass the judiciary by mandating a particular result by operation of law. Accordingly, those cases do not fully answer the constitutional question that would be raised if the automatic stay provision were interpreted to displace a court's traditional equitable authority.

4. The statutes discussed by the State in its petition (Pet. 13-14) and by Judge Easterbrook in his dissent from the denial of rehearing en banc (Pet. App. 31a-35a) do not pose the same constitutional problem.

a. For example, while the automatic stay in bankruptcy goes into effect upon the filing of a bankruptcy petition, 11 U.S.C. 362(a)(1), a court immediately has broad authority to "terminat[e], annul[], modify[], or



condition[] such stay." 11 U.S.C. 362(d). Because the automatic stay in bankruptcy is subject to judicial control, it does not raise the Article III question that would be presented if the PLRA automatic stay were interpreted to foreclose equitable relief. See *Plaut*, 514 U.S. at 231-232.

In addition, since the time that Congress first exercised its plenary authority under the Bankruptcy Clause to provide "uniform Laws on the subject of Bankruptcies throughout the United States," U.S. Const. Art. I, § 8, the judgments that have been issued by Article III courts have been qualified by that system of laws. That feature of bankruptcy law has significant Article III consequences. As the Court explained in *Plaut*:

> The finality that a court can pronounce is no more than what the law in existence at the time of judgment will permit it to pronounce. If the law then applicable says that the judgment may be reopened for certain reasons, that limitation is built into the judgment itself, and its finality is so conditioned.

514 U.S. at 234. By contrast, the PLRA stay provision does not simply build certain limitations into future judgments; it imposes such limitations on previously existing decrees.

b. The 10-day limit on temporary restraining orders set forth in Federal Rule of Civil Procedure 65(b) similarly does not raise the Article III question presented here. Rule 65 does not purport to suspend final judgments of Article III courts by operation of law; the 10-day limit on temporary restraining orders is built into the orders that a court issues; and a court retains authority to preserve the status quo by issuing a

preliminary injunction once the 10-day period expires. See Fed. R. Civ. P. 65(b).

c. The requirement in the Speedy Trial Act of 1974, 18 U.S.C. 3162(a)(2), that an indictment must be dismissed if the defendant is not tried within the statutory period similarly does not raise Article III concerns. A failure to try a defendant within the statutory period results in the dismissal of an indictment, not in the suspension of a judgment. *Ibid.* The dismissal of the indictment requires a judicial act; it does not occur by operation of law. *Ibid.* And the court retains broad authority to extend the applicable period and to dismiss without prejudice. 18 U.S.C. 3161(h), 3162(a)(2).

d. The 30-day expedited review provision for appeals by persons incarcerated for contempt of a grand jury, 28 U.S.C. 1826(b), likewise does not pose Article III concerns. That provision applies to judgments that are subject to appeal. Such legislation does not raise the same Article III problems as legislation affecting judgments that are no longer subject to appeal. *Plaut*, 514 U.S. at 226-227. Section 1826(b), moreover, simply specifies a time limit for a decision; it does not specify a consequence for a court's failure to meet the deadline. A court is therefore free to decide what effect, if any, a failure to meet the statutory deadline will have on the court's judgment.

e. The various other statutes that set forth time limits on judicial decisionmaking are also inapposite here. Pet. App. 33a-35a (Easterbrook, J., dissenting from the denial of rehearing en banc) (discussing the relevant statutes). The constitutional problem with interpreting the automatic stay provision to foreclose equitable relief is not that it would require a court to make a decision on the merits of a termination motion within a specified time period. The problem is that, if



the court does not make a decision on the merits within a specified period, relief in a final judgment that may be necessary to remedy a violation of federal law would be suspended by operation of law. None of the time limit statutes raise that constitutional problem.

5. If the Court concludes that it is necessary to decide the difficult constitutional question presented if the automatic stay provision is construed to foreclose a court's authority to issue equitable relief, we believe that, on balance, Congress's broad authority to affect prospective relief, *Wheeling Bridge*, *supra*, its general power to control the exercise of equitable discretion, *Romeo-Barcelo*, *supra*, and the 90-day window for judicial action on the merits before the automatic stay takes effect would be sufficient to sustain its constitutionality. That construction of the automatic stay provision, however, would raise serious Article III concerns that are not presented when the automatic stay provision is interpreted to permit the exercise of traditional equitable authority. Since the automatic stay provision can fairly be interpreted to permit a court to suspend the automatic stay and thereby preserve the status quo in accordance with traditional equitable standards, the court of appeals erred in failing to adopt that interpretation.

## CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

SETH P. WAXMAN
*Solicitor General*

BILL LANN LEE
*Acting Assistant Attorney General*

BARBARA D. UNDERWOOD
*Deputy Solicitor General*

IRVING L. GORNSTEIN
*Assistant to the Solicitor General*

MARK L. GROSS
*Attorney*

FEBRUARY 2000

Supreme Court, U.S.
FILED
FEB 3 2000
CLERK

(11) (10)

Nos. 99-224 and 99-582

# In the Supreme Court of the United States

CHARLES B. MILLER, ET AL., PETITIONERS

*v.*

RICHARD A. FRENCH., ET AL.

UNITED STATES OF AMERICA, PETITIONERS

*v.*

RICHARD A. FRENCH., ET AL.

*ON WRITS OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE SEVENTH CIRCUIT*

## JOINT APPENDIX

SETH P. WAXMAN
*Solicitor General*
*Department of Justice*
*Washington, D.C. 20530-0001*
*(202) 514-2217*

*Counsel of Record*
*for Petitioner United States*

JON LARAMORE
*Deputy Attorney General of Indiana*
*219 State House*
*Indianapolis, Indiana 46204*
*(317) 232 6315*

*Counsel of Record*
*for Petitioner Miller*

KENNETH J. FALK
INDIANA CIVIL LIBERTIES UNION
*1031 E. Washington Street*
*Indianapolis, Indiana 46202*
*(317) 635-4059*

*Counsel of Record*
*for Respondent*

**PETITION FOR WRIT OF CERTIORARI IN NO. 99-244 FILED: AUGUST 3, 1999**
**PETITION FOR WRIT OF CERTIORARI IN NO. 99-582 FILED: OCTOBER 4, 1999**
**CERTIORARI GRANTED: DECEMBER 6, 1999**

65pp

TABLE OF CONTENTS


| | Page |
|---|---|
| Court of Appeals Docket Entries | 1 |
| Order granting Motion for Preliminary Injunction | 6 |
| Ordering amending May 7, 1982 order | 12 |
| Memorandun entry of the District Court | 18 |
| Amended Order | 21 |
| Memorandun of December 14, 1984 | 27 |
| Stipultation of the District Court | 43 |
| Defendant's Motion to Dismiss Decree | 45 |
| Certificate of Service, June 5, 1997 | 48 |
| Plaintiff's motion for a temporary restraining order or preliminary injunction to stay the automatic termination provision of the prison litigation reform Act | 16<br>49 |
| Certificate of Service on David A. Arthur | 52 |
| Transcript of the Temporary Restraining Order | 53 |

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

---

No. 97-3075

RICHARD A. FRENCH, MORRIS E. DOZIER, MARTIN W. BRADBERRY, HENRY C. JENNINGS,
PLAINTIFFS-APPELLEES

*v.*

JACK R. DUCKWORTH, SUPERINTENDENT; BRUCE LEMMON, DEPUTY COMMISSIONER FOR OPERATIONS; EDWARD L. COHN, COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION,
DEFENDANTS-APPELLANTS

AND

UNITED STATES OF AMERICA, INTERVENOR-APPELLANT

---

[Filed: Aug. 15, 1997]

---

**DOCKET ENTRIES**

| DATE | PROCEEDINGS |
|---|---|
| | * * * * * |
| 9/2/97 | Filed motion by Amicus Curiae USA to intervene. * * * |
| | * * * * * |

| DATE | PROCEEDINGS |
|---|---|
| 9/10/97 | ORDER issued GRANTING USA's motion to participate as intervening-appellant. * * * |
| | * * * * * |
| 5/6/99 | Filed opinion of the court by Judge Diane P. Wood. AFFIRMED. Circuit Judge Joel M. Flaum, Circuit Judge Ilana D. Rovner, Circuit Judge Diane P. Wood. Circuit Judge Easterbrook, with whom Chief Judge Posner, and Circuit Judge Manion, join dissenting from the denial of rehearing en banc. Note: This opinion was circulated pursuant to Circuit Rule 40(e) and this opinion is being released in typescript. A printed copy will follow. * * * |
| 5/6/99 | ORDER: Final judgment filed per opinion. With costs: n. * * * |
| | * * * * * |



UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
(INDIANAPOLIS)

Civil Action No. IP 75-677-C

RICHARD A. FRENCH, MORRIS E. DOZIER, MARTIN W. BRADBERRY, HENRY C. JENNINGS, PLAINTIFFS

*v.*

THEODORE L. SENDAK, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF INDIANA; ROBERT E. HEYNE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE INDIANA DEPARTMENT OF CORRECTIONS; GEORGE W. PHEND, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE INDIANA STATE REFORMATORY; ALBERT CALHOUN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE CONDUCT ADJUSTMENT BOARD AT THE INDIANA STATE REFORMATORY; SGT. ROBERT CORNELISN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS INVESTIGATION OFFICER OF THE INDIANA STATE REFORMATORY, DEFENDANTS

**DOCKET ENTRIES**

| DATE | PROCEEDINGS |
|---|---|
| | * * * * * |
| 6/5/97 | MOTION to terminate decree c/s DEFTS |

| DATE | PROCEEDINGS |
|---|---|
| | * * * * * |
| 7/3/97 | Temporary restraining Order that at 2:00 pm on this 3rd day of July 1997issues a TRO enjoining and prohibiting the automatic termination provision of the Prison Litigation Reform Act from taking effect and will expire at 2:00pm on the 7/13/97 and the hearing on the motion preliminary injunction is set for the 7/10/97 at 10:30a.m. * * * |
| 7/3/97 | NOTICE of claim of unconstitutionality c/s/ PLTFS * * * |
| | * * * * * |
| ***6/30/97 | PLAINTIFFS: |
| | (1) Motion for a TRO or Preliminary Injunction to Stay the Automatic Termination provision of the PLRA. c/s. |
| | * * * * * |
| | (3) RESPONSE to defts' Motion to Terminate Decree. c/s. |
| 7/08/97 | NOTICE TO THE Attny General of the USA-The constitutionality has been drawn into question * * * |
| 7/11/97 | ORDER GRANTING pltfs motion for preliminary injunction. TRO is now converted |



| DATE | PROCEEDINGS |
|---|---|
| | to a preliminary injunction. There shall be no stay of prospective relief in this matter and the parties shall continue to comply with this Court's prior orders and judgments until further order to the Court cm SHD * * * |
| | * * * * * |
| 8/8/97 | NOTICE OF APPEAL to the United States Court of Appeals for the Seventh Circuit from the order granting plaintiffs' motion for preliminary injunction entered July 11, 1997 * * * |
| | * * * * * |

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

---

Civil Action No. IP 75-677-C

RICHARD A. FRENCH, ET AL., PLAINTIFFS

*vs.*

NORMAN G. OWENS, DEFENDANTS

UNITED STATES OF AMERICA, AMICUS CURIAE

---

**ORDER**

Plaintiffs have moved the Court for a preliminary injunction enjoining the defendants, their agents, servants, employees, and all persons in active concert and participation with them from employing the use of chains, shackles, handcuffs, or any other form of hard or soft restraints on celled inmates.

The Court has heard evidence on the use of mechanical restraints on celled inmates at the Indiana Reformatory and, having fully heard the evidence presented by all parties to this proceeding, the argument of counsel, and being duly advised in the premises, now finds that a preliminary injunction should issue.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the following preliminary injunction be and hereby is issued enjoining defendants, their agents, servants, employees, and all persons in active concert and participation with them as follows:



1. For purposes of this preliminary injunction, the term "mechanical restraints" shall mean the use of hard or soft mechanical restraining devices to restrain a prisoner to his bed or in any other fashion in his cell, other than the routine use of restraints for transporting prisoners or the use of handcuffs alone to control unruly prisoners.

2. Mechanical restraints shall not be used as punishment.

3. Hard mechanical restraints shall not be used to restrain any prisoner in his cell.

4. A prisoner may be mechanically restrained by custody staff in a cell only under the following conditions.

a. No prisoner may be mechanically restrained in any unit other than the Infirmary Restraint Unit.

b. Only soft mechanical restraints may be used.

c. No prisoner may be mechanically restrained except by prior personal approval of the highest custody officer on duty at the time of restraint, including the Superintendent or, in his absence, the acting Superintendent. If the highest custody officer approving the use of mechanical restraints is anyone other than the Superintendent or, in his absence, the acting Superintendent, the decision to restrain must be approved by the Superintendent or, in his absence, the acting Superintendent, within 15 minutes of the application of mechanical restraints. The

reasons for application of mechanical restraints shall be set out in writing and in detail.

d. Mechanical restraints may be applied to a prisoner, in the absence of a psychiatrist's order, for no greater period of time than two hours or a licensed psychiatrist arrives, whichever is shorter, and may be applied only in an emergency situation as the last alternative to prevent serious bodily harm to the prisoner.

e. A prisoner who is mechanically restrained without the order of a psychiatrist shall be kept under continuous observation by a trained medical staff employee, until released or a psychiatrist arrives.

f. Mechanical restraints shall be lessened and completely released at the earliest opportunity that the prisoner's behavior permits.

5. No prisoner may ever be mechanically restrained under standing orders or PRN orders of a medical doctor or psychiatrist.

6. No mechanical restraints may be applied to a prisoner in excess of the above conditions, except by order and under the direction of a psychiatrist having personal observation of the prisoner being restrained or to be restrained. No psychiatrist may order the application of mechanical restraints to a prisoner, except under the following conditions:

a. Only soft mechanical restraints may be used.

b. Mechanical restraints may not be used for a period of time longer than 24 hours, absent



immediate transfer of the prisoner to an appropriate, licensed medical/psychiatric facility.

c. No prisoner may be mechanically restrained in any unit other than the Infirmary Restraint Unit.

d. A prisoner who is mechanically restrained shall be personally observed by a qualified mental health professional, as defined below, at least every 15 minutes.

e. Mechanical restraints shall be lessened and completely released at the earliest opportunity that the prisoner's behavior permits.

f. A prisoner who is mechanically restrained shall be personally observed by a licensed psychiatrist at least every 12 hours, and the order to restrain be renewed, if at all, every 12 hours after personal observation by the psychiatrist.

7. A prisoner who is mechanically restrained shall be released from restraints to go to the bathroom as needed, but in no event less often than every four hours.

8. A prisoner who is mechanically restrained shall be released from restraints in order to eat at all regular mealtimes.

9. A qualified mental health professional shall mean:

(1) a psychiatrist with three years of residency training in psychiatry;

(2) a psychologist with a doctoral degree from an accredited program;

(3) a social worker with a master's degree from an accredited program and two years of clinical experience under the supervision of a Qualified Mental Health Professional;

(4) a registered nurse with a graduate degree in psychiatric nursing and two years of clinical experience under the supervision of a Qualified Mental Health Professional.

10. Mechanical restrains shall not be used as a method of punishment; around the head or neck of a prisoner; or in any way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing.



11. No prisoner shall be mechanically restrained without being properly clothed and being provided with proper bedding.

DATE: March 5, 1982

\s\ S. HUGH DILLIN
S. HUGH DILLIN
JUDGE, United States District Court

Copies to:

Donald R. Lundberg
Legal Services Organization
of Indiana, Inc.
107 North Pennsylvania Street
Suite 300
Indianapolis, Indiana 46204

David Arthur
Deputy Attorney General
219 State House
Indianapolis, Indiana 46204

Stephen Whinston
Department of Justice
Civil Rights Division
Special Litigation Section
Washington, D.C. 20530

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

---

No. IP 75-677-C

RICHARD A. FRENCH, ET AL., PLAINTIFFS

*vs.*

NORMAN G. OWENS, DEFENDANTS

UNITED STATES OF AMERICA, AMICUS CURIAE

---

**ORDER**

This case came before the Court on June 29, 1983 for a Compliance Conference with the Court. Attorneys for the parties advised the Court that they were needing to discuss compliance with the Order of this Court dated May 7, 1982. On August 13, 1982, after being ordered by the Court to meet and discuss implementation of the Order, the parties filed a Joint Report to the Court stating that:

> "The Counsel for the Plaintiffs and the Defendants have met with some of the Defendants and their counsel at two substantial, lengthy meetings to discuss compliance with the Order. Substantial progress has been made toward reaching agreement on several key items contained in the Order. The Defendants have made a good faith effort to move toward compliance with the Order as rapidly as current staff and resources permit. The parties plan to continue their discussion and are optimistic that some of the items in the Order can be resolved without further judicial proceedings. It is anticipated



> that some of the items in the Order will be, in the future, subject to judicial proceedings for a stay and for an appeal."

The Court finds, based on representations of counsel for both parties, that the progress made by the Defendants towards compliance with the Order has continued at a reasonable rate from August 13, 1982 until the present time. Specifically, based upon representation by counsel, the Court finds that the following progress has been made towards compliance with the Order:

1) Double celling has been dramatically reduced at the Indiana Reformatory to the point where approximately 40 cells are occupied by two inmates at the present time;

2) The kitchen and serving area at the Indiana Reformatory has been rehabilitated and is now in compliance with the Order of the Court;

3) The Maximum Restraint Unit has been rehabilitated and is now in compliance with the Order of the Court;

4) Substantial progress has been made toward construction of a new hospital or infirmary such that the defendants are now in compliance with or making substantial progress toward compliance with the Court's Order as it relates to medical facilities;

5) The professional medical care provider staff at the Indiana Reformatory has been significantly increased and is now in compliance with the Order of the Court.

6) The Defendants have significantly improved the access of self lock-up and protective custody inmates to programs, activities and counseling and the Defendants are currently in substantial compliance with the Order of the Court;

7) The procedures for delivery of medical care to the inmate population have been improved and the Defendants are currently in compliance with the Court's Order regarding medical procedures;

8) The Defendants have added 44 new positions for custody officers to the manning table of the Indiana Reformatory and have filled most of the those positions and the Defendants are currently in substantial compliance with the Court's Order to secure sufficient staff to safely and securely operate the Reformatory;

9) The Defendants have improved the availability of substance abuse programs and mental health services and counseling and are currently in substantial compliance with the Order of the Court as to those programs;

10) The Defendants have improved the availability of special medically prescribed diets, including the assignment of a licensed dietitian to the Indiana Reformatory and are in compliance with the Court's Order to provide special medically prescribed diets;

11) The Defendants have let bids which, when followed through to completion, will bring the living units at the Indiana Reformatory into compliance with the standards of the Indiana State Fire Marshall, and the Defendants have made satisfactory progress toward compliance with the Court's Order;



12) The Defendants have progressed towards bringing the work locations at the Indiana Reformatory into compliance with the Occupational Safety and Health Administration Regulations and are currently in substantial compliance with the Court's Order.

The Court having duly considered the Motion to Stay and the Motion to Amend filed by the Defendants, and the Court further having considered the responses thereto filed by the Plaintiffs, and the United States of America, Amicus Curiae and the Court being further advised by counsel at the conference with the Court on June 29, 1983,

NOW, THEREFORE IT IS ORDERED that the Order of this Court dated May 7, 1982, is amended as follows:

1) Paragraph 2 of the Order is amended to provide that effective October 1, 1983, and thereafter, the population of the Indiana Reformatory shall not exceed 1,750 persons;

2) Paragraph 3 of the Order is amended to provide that effective July 1, 1984, the population of the Indiana Reformatory, shall not exceed 1,375 persons, provided, however, that upon the completion of the 240 bed addition to the Indiana Reformatory which is now under construction, the population limit imposed by this paragraph shall be increased to 1,615 persons;

3) Paragraph 9 of the Court's Order is amended to provide as follows: "Each inmate at the reformatory who is in general population, protective custody or self-lock-up, shall have the opportunity to engage in recreation outside his living unit, for at least 90 minutes each day. Inmates confined to the Maximum Restraint

Unit or the Administrative Segregation Unit for Disciplinary Reasons shall have the opportunity to engage in recreation for a least 60 minutes each day. Weather permitting and except in cases of emergency, all inmate recreation at the Indiana Reformatory shall be out of doors. Inmates confined to Disciplnary Segregation shall be afforded a meaningful opportunity to recreate during the 60 minutes each day out of cell, which opportunity to recreate can be out of doors, on the range if adequate equipment is provided or at some other place, provided however that inmates who abuse the right to engage in recreation can be deprived of such opportunity for a period not to exceed 30 days."

4) Paragraph 11 of the Order is amended to provide that: "The right of an inmate to call a particular witness at a disciplinary hearing may be denied by the defendants only when the record reflects a justifiable reason for refusing to call the desired witness."

IT IS FURTHER ORDERED that the Defendants' Motion to Stay the Court's Order that all inmates be provided an educational, vocational or job assignment is hereby denied.

IT IS FURTHER ORDERED that the Defendants' Motion to Stay or Amend the Order entered by this Court limiting the use of mechanical restraints by the Defendants is hereby denied.

IT IS FURTHER ORDERED that counsel for both parties have represented to the Court that the foregoing Order disposes of all pending motions for stay and motions to amend the Order, but in the event any such motions have been inadvertently omitted from this Order, any and all other motions to amend or for stay



heretofore filed by the Defendants in this action are hereby denied.

DATED this 7th day of July, 1983.

\s\ S. HUGH DILLIN
S. HUGH DILLIN
UNITED STATES DISTRICT
JUDGE

Copies to:

Linley E. Pearson
Attn: David A. Arthur
Indiana Attorney General
Indiana State House
Indianapolis, Indiana 46204

Donald R. Lundberg
William E. Marsh
Michael R. Milsap
Legal Services Organization
of Indiana, Inc.
107 N. Pennsylvania #300
Indianapolis, Indiana 46204

Harold Bickham
Assistant U.S. Attorney
U.S. Courthouse
Indianapolis, IN 46204

Stephen Whinston
Special Litigation Section
Civil Rights Division
Department of Justice
942 HOLC Building
1st and C., N.W.
Washington, D.C. 20534

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

---

Cause No. IP75-677-C

RICHARD A. FRENCH, ET AL., PLAINTIFFS

*v.*

NORMAN G. OWENS, ET AL., DEFENDANTS

---

**MEMORANDUM ENTRY**

This cause came on for hearing upon the defendants' Motion for Enlargement of Time Within Which to Comply With Paragraphs 3 and 5 of Order. Although defendants' motion is stated to be pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, the Court construes it to be a motion for modification of a permanent injunction pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. See *U.S. v. City of Chicago*, 663 F.2d 1354, 1359, n.16 (7th Cir. 1981) (en banc).

Because this case is pending on appeal to the United States Court of Appeals for the Seventh Circuit, this Court is presently without jurisdiction to grant any modification of the permanent injunction. *Textile Banking Co., Inc. v. Rentschler*, 657 F.2d 844, 849 (7th Cir. 1981). However, having heard evidence on the defendants' motion, and in accordance with the procedures outlined in *Textile Banking*, the Court hereby declares that it is inclined to grant relief upon defendants' motion. 657 F.2d 844 at 849, n.2. Therefore, defendants are now free to rely upon this declaration in



seeking leave from the Court of Appeals to remand this case for consideration by this Court of a modification to paragraphs 3 and 5 of the permanent injunction.

Additionally, plaintiffs have orally moved in open court that this Court reconsider and modify those portions of the permanent injunction decided on pendent state law grounds. In view of the very recent decision of the United States Supreme Court in *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 104 S.Ct. 900 (1984), it appears that some of the relief granted may be in violation of the Eleventh Amendment. The Court is advised that all parties have agreed in their briefs in the Court of Appeals that this case should be remanded to the district court for further consideration in light of *Pennhurst*. Thus, this Court hereby declares, pursuant to *Textile Banking*, that it is inclined to grant relief upon plaintiffs' motion. Plaintiffs, too, are free to rely upon this declaration in seeking leave from the Court of Appeals to remand this

case for further consideration in light of the decision in *Pennhurst*.

Entered this 30 day of August, 1984.

\s\ S. HUGH DILLIN
S. HUGH DILLIN
JUDGE, United States District Court

Distribution:

Donald R. Lundberg
Legal Services Organization
of Indiana, Inc.
107 N. Pennsylvania St., #300
Indianapolis, IN 46204

David A. Arthur
Deputy Attorney General
219 State House
Indianapolis, IN 46204

Harold R. Bickham
Assistant U.S. Attorney
274 U.S. Courthouse
Indianapolis, IN 46204



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

---

No. IP 75-677-C

RICHARD A. FRENCH, MORRIS E. DOZIER, MARTIN W. BRADBERRY, HENRY C. JENNINGS, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,
PLAINTIFFS

*vs.*

NORMAN OWENS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE INDIANA REFORMATORY; CLOID SCHULER, IN HIS CAPACITY AS EXECUTIVE DIRECTOR OF THE ADULT AUTHORITY, INDIANA DEPARTMENT OF CORRECTION; GORDON FAULKNER, IN HIS CAPACITY AS COMMISSIONER OF THE INDIANA DEPARTMENT OF CORRECTION,
DEFENDANTS

---

**AMENDED ORDER**

The Court having this day filed its amended memorandum of decision in the above entitled cause, as follows: ( H. I.), now pursuant thereto

IT IS ORDERED ADJUDGED AND DECREED that the defendants, their agents, successors in office, and all persons acting in concert or participation with them, shall comply with the following requirements:

1. Paragraphs 3, 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 20 and 21 of this Court's order of May 7, 1982 are

hereby vacated. Consistent with the July 7, 1983 amendments made to the May 7, 1982 order, paragraph 11 of the order is amended to provide that: "The right of an inmate to call a particular witness at a disciplinary hearing may be denied by the defendants only when the record reflects a justifiable reason for refusing to call the desired witness."

2. Effective January 1, 1985, and thereafter the population at the Indiana Reformatory shall not at any time exceed 1,615 persons. This figure will be modified to take into consideration any additional newly constructed housing, if any.

3. Effective May 1, 1985, and thereafter, no more than one inmate shall be assigned to any cell.

4. Effective May 1, 1985, and thereafter, double bunk beds shall not be used in any dormitory.

5. At the earliest possible time and by no later than January 1, 1985, the medical staff at the Reformatory shall include at least two full-time medical doctors, five full-time physician's assistants, a full-time hospital administrator, a full-time pharmacist, a psychiatrist or psychiatrists for at least 40 hours per week, two Masters level psychiatric social workers, one Ph.D. clinical psychologist, two behavioral clinicians, nine medical technicians and two full-time clerk typists. All medical personnel shall be fully qualified, and all newly hired personnel must be able to converse fluently in the English language. If qualified personnel cannot be obtained at present salary levels, raise the levels.

6. Defendants shall provide medical care facilities and equipment sufficient to make available adequate



medical care to the inmate population. Within 30 days, defendants shall submit specific plans to comply with this paragraph by May 1, 1985. Said plans shall include development of alternative emergency care facilities, provisions for the prompt referral of inmate patients for diagnosis and treatment without nonmedical limitations on the number of daily referrals, obtaining adequate medical equipment, and either renovating the present facility or constructing a new medical facility at the Reformatory. Notwithstanding the earlier compliance date of January 1, 1985, renovation of the present medical facility shall be complete by January 1, 1986, or alternatively, construction of a new medical facility shall be complete by July 1, 1986.

7. Defendants shall establish adequate and proper procedures for the delivery of medical care to the inmate population. Within 30 days, defendants shall submit specific plans to comply with this paragraph by May 1, 1985. Said plans shall include procedures for sick call open to all inmates at least six days per week, delineation of responsibility and authority between the various medical personnel, provisions for close supervision of all nonphysician personnel, and provisions for daily sick call for all inmates confined to their cells.

8. Defendants shall provide substance abuse programs and mental health services and counseling for those who need and want such treatment. Within 30 days, the defendants will submit a plan for compliance with this paragraph, including crisis intervention, so that compliance will occur on or before May 1, 1985.

9. Defendants shall within 60 days submit to the Court a plan which will provide for preparation and

distribution of special medically prescribed diets under the supervision of qualified personnel.

10. The kitchen and dining room at the Indiana Reformatory shall be at all times maintained in such a condition as is necessary to provide the inmates with safe, sanitary and nutritionally adequate food.

11. Each inmate at the Indiana Reformatory who is in general population, protective custody, or otherwise segregated for nondisciplinary reasons, shall have the opportunity to engage in recreation outside his living unit for at least 90 minutes each day. Inmates confined to the Maximum Restraint Unit or the Administrative Segregation Unit for disciplinary reasons shall have the opportunity to engage in recreation outside the living unit for a least 60 minutes each day. The recreation shall be made available outdoors, unless inclement weather or security reasons necessitate otherwise, in which case the recreation opportunity may be indoors. Whether indoors or outdoors, the opportunity to recreate shall be in a facility where the inmates have an opportunity to engage in meaningful recreation. Inmates confined to Disciplinary Segregation shall be afforded a meaningful opportunity to recreate during the 60 minutes each day out of cell, which opportunity to recreate can be out of doors, on the range if adequate equipment is provided, or at some other place, provided, however, that inmates who abuse the right to engage in recreation may be deprived of such opportunity for a period not to exceed 30 days. Otherwise, permitting the inmates to have access to the range in front of the cells does not constitute compliance with this paragraph.



12. All inmates confined in the protective custody program and all other inmates segregated for nonpunitive reasons, shall be provided access to all programs, activities, recreation and counseling on a basis which is reasonably comparable with that afforded the general population. Within 60 days, the defendants shall submit specific plans to comply with this paragraph.

13. The defendants shall at all times employ an adequate number of correctional officers to secure within reason the personal safety of all inmates confined at the Indiana Reformatory. The correctional officers shall be adequately trained and shall be deployed in such a manner that the personal safety of the inmates is protected. Additional attention shall be given to dormitories and upper tiers of the cellblocks. The defendants shall submit a plan for complying with this paragraph within 60 days of this date.

14. All buildings at the Indiana Reformatory in which inmates live or work shall be reasonably secure from dangers of fire. In order to secure compliance with the personal safety requirements of the Eighth and Fourteenth Amendments, the defendants shall bring all buildings into compliance with the standards of the Indiana State Fire Marshal no later than May 1, 1985, and shall maintain the buildings in accordance with that standard at all times thereafter.

15. All operations in the various places of work and training at the Indiana Reformatory shall be operated in a safe manner as required by the Eighth and Fourteenth Amendments to the Constitution of the United States in accordance with the regulations of the Occupational Safety and Health Administration. The defen-

dants shall submit a plan for compliance with this paragraph within 60 days of this date.

All of which is considered and ordered this 14th day of December, 1984.

\s\ S. HUGH DILLIN
S. HUGH DILLIN
JUDGE

Copies to:

Donald R. Lundberg, William E. Marsh, Legal Services Organization of Indiana, Inc., Suite 300, 107 North Pennsylvania Street, Indianapolis, Indiana, 46204

Linley E. Pearson, Indiana Attorney General, 219 State House, Indianapolis, Indiana, 46204 (David A. Arthur, Deputy)

John Daniel Tinder, United States Attorney, 274 United States Courthouse, Indianapolis, Indiana, 46204 (Harold R. Bickham, Assistant)

James Clute, Civil Rights Division, Department of Justice, P.O. Box 23991, Washington, D. C., 20026-3991

Edith S. Marshall, Department of Justice, HOLC Building, 320 First Street, N.W., Washington, D. C., 20530



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

---

No. IP 75-677-C

RICHARD A. FRENCH, MORRIS E. DOZIER, MARTIN W. BRADBERRY, HENRY C. JENNINGS, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,
PLAINTIFFS

*vs.*

NORMAN OWENS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE INDIANA REFORMATORY; CLOID SCHULER, IN HIS CAPACITY AS EXECUTIVE DIRECTOR OF THE ADULT AUTHORITY, INDIANA DEPARTMENT OF CORRECTION; GORDON FAULKNER, IN HIS CAPACITY AS COMMISSIONER OF THE INDIANA DEPARTMENT OF CORRECTION,
DEFENDANTS

---

MEMORANDUM

This case is before the Court on remand from the United States Court of Appeals for the Seventh Circuit, by agreement of the parties and pursuant to this Court's Memorandum Entry of August 30, 1984. This Court previously entered its Order and Memorandum of Decision awarding permanent injunctive relief in favor of the plaintiffs on May 7, 1982, finding that certain conditions of confinement at the Indiana Reformatory violated state and federal law. *French v. Owens*, 538 F.Supp. 910 (S.D. Ind. 1982). During the pendency of this case on appeal to the Seventh Circuit

Court of Appeals, the United States Supreme Court ruled in *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 104 S. Ct. 900, 79 L.Ed.2d 67 (1984), that under the Eleventh Amendment to the United States Constitution, federal courts lacked jurisdiction over claims for injunctive relief against state officials based upon state law.

Because the May 7, 1982 order was based, in part, upon findings of state law violations and compelled state officials to comply with state law, that order must be reconsidered in light of *Pennhurst, supra.*

The original decision in this case was rendered under the familiar principle of first considering pendent state law claims in order to avoid unnecessarily determining federal constitutional law questions. Numerous violations of state law were found and in areas where no specific state statute applied, certain violations of the Eighth and Fourteenth Amendments to the United States Constitution were found.

The Court specifically found that the deplorable housing and extensive overcrowding, including double-celling and double-bunking, constituted cruel and unusual punishment when considered in light of the other grievous conditions imposed upon the inmates. The Court also found that the totality of the conditions existing at the Reformatory violated the Eighth and Fourteenth Amendments. These holdings are not altered by this memorandum, *see Wellman v. Faulkner*, 715 F.2d 269, 274 (7th Cir. 1983), *cert. denied*, 468, U.S. 1217, 104 S. Ct. 3587, 82 L.Ed.2d 885 (1984); *Palmigiano v. Garrahy*, 443 F.Supp. 956, 979 (D.R.I. 1977), nor are the previous findings with respect to prison discipline and access to courts altered herein.



The Court found that state statutes regulating prison conditions were violated at the Reformatory as follows: Ind. Code § 11-10-11-2 respecting exercise and recreation; Ind. Code §§ 11-10-3-2 and 11-10-4-2 respecting medical care for both physical and mental health problems; Ind. Code §§ 11-10-5-1, 11-10-6-2, and 11-10-6-3 respecting academic and vocational education and employment; and Ind. Code §§ 11-11-6-1 and 11-11-6-2 respecting a safe and healthful environment. Upon finding these state law violations, the Court did not determine whether the same conditions constituted violations of federal law. In light of *Pennhurst*, however, this Court lacked jurisdiction to consider the pendent state law claims. Therefore, the Court must now reconsider the findings in this case under federal law standards.

The Eighth Amendment to the United States Constitution proscribes the imposition of cruel and unusual punishment and is applicable to the states through the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417, 8 L.Ed.2d 758 (1962). The proscription against cruel and unusual punishment must be viewed under "evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337, 346, 101 S. Ct. 2392, 69 L.Ed.2d 59, 68 (1981). Conditions of confinement will abridge the Eighth Amendment if they "involve the unnecessary and wanton infliction of pain . . . or are grossly disproportionate to the severity of the crime" (citations omitted). Id. Additionally, prison conditions resulting in serious deprivations of basic human needs have been found to constitute cruel and unusual punishment under the Eighth Amendment. *Hutto v. Finney*, 437 U.S. 678,

98 S. Ct. 2565, 57 L.Ed.2d 522 (1978); *Estelle v. Gamble*, 429 U.S. 97, 97 S. Ct. 285, 50 L.Ed.2d 251 (1976).

In considering challenged prison conditions under the Eighth Amendment, the Court must consider the "totality of the conditions of confinement" but nevertheless, must not make vague conclusions of unconstitutionality. *Smith v. Fairman*, 690 F.2d 122 (7th Cir. 1982). Conditions which independently are unquestionably constitutional do not become unconstitutional by their aggregation. *Wellman v. Faulkner*, 715 F.2d 269, 275 (7th Cir. 1983). Conditions may be restrictive and even harsh, but unless they constitute cruel and unusual punishment, "they are part of the penalty that criminal offenders pay for their offenses against society." On the other hand, conditions other than those in *Gamble* and *Hutto, alone or in combination* (our italics), may deprive inmates of the minimal civilized measure of life's necessities and be cruel and unusual. *Rhodes v. Chapman*, 452 U.S. 337, at 347.

1. Exercise and Recreation

The importance of regular exercise and recreation to the physical and psychological health of incarcerated individuals is well recognized. *Patterson v. Mintzes*, 717 F.2d 284 (6th Cir. 1983); *Ruiz v. Estelle*, 679 F.2d 1115, 1152, *modified*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042, 103 S. Ct. 1438, 75 L.Ed.2d 795 (1983). *See Preston v. Thompson*, 589 F.2d 300 (7th Cir. 1978); *Hendrix v. Faulkner*, 525 F. Supp. 435, 523 (N.D. Ind. 1981), *aff'd in part, rev'd in part sub nom, Wellman v. Faulkner*, 715 F.2d 269 (7th Cir. 1983), *cert. denied*, 468 U.S. 1217, 104 S. Ct. 3587, 82 L.Ed.2d 885 (1984). A deprivation of exercise or recreation, impairing the physical or mental health of inmates,



violates the Eighth Amendment. *Ruiz v. Estelle*, 679 F.2d at 1152. Factors to consider in analyzing the adequacy of exercise and recreation for prisoners include the size of the cell, the amount of time the inmate spends locked in the cell each day, and the overall duration of confinement. *Id.* at 1151. The inmates at the Reformatory were found to be double-celled and double-bunked in less than half the space required under contemporary minimum standards.

The inmates are confined for up to 23 hours a day and frequently, when exercise and recreation are provided, the inmates are crowded in the tiny gymnasium where no meaningful exercise or recreation is possible for the vast majority of the inmates. Additionally, few inmates were found to have education assignments and only 64% had job assignments. The number of working inmates, nevertheless, exceeds the authorized number of positions available.

Lastly, the Indiana Reformatory is a maximum security institution in which most inmates are serving long, and frequently life, sentences. The conditions at the Reformatory have resulted in increased tension and violence and have caused a significant increase in the number of inmates seeking protective custody. Inmates in protective custody, as well as those in administrative segregation pending investigations of prison rules and pretrial detainees, are afforded significantly less exercise and recreation than inmates in the general population and are denied access to educational, vocational and work assignments. The increased severity of confinement for these inmates serves no penological purpose and is imposed upon them merely because the institution is overcrowded and lacks sufficient staff to

secure their safety. Therefore, considering the size of the cells and dormatories, the time spent confined in them, the duration of confinement at the Reformatory and other noted conditions, the deprivation of adequate exercise and recreation has a degenerative effect on the mental and physical health of the inmates and constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

2. Medical and Psychiatric Care

The defendants have an obligation to provide adequate medical care for individuals incarcerated at the Reformatory. Intentional denial of access to medical care or interference with prescribed treatment by prison officials violates the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 97 S. Ct. 285, 50 L.Ed.2d 251 (1976). The Supreme Court has explained that "the denial of medical care is cruel and unusual because, in the worst case, it can result in physical torture, and, even in less serious cases, it can result in pain without any penological purpose." *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S.Ct. 2392, 69 L.Ed.2d 59, 69 (1981).

The obligation to provide medical care to incarcerated individuals extends to medical treatment for physical illness, to dental care, and to psychiatric and psychological care. *Ramos v. Lamm*, 639 F.2d 559, 574 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041, 101 S. Ct. 1759, 68 L.Ed.2d 239 (1981). *See also Monmouth County Correctional Institution Inmates v. Lanzaro*, No. 82-1924 (D.N.J. Oct. 10, 1984); *Fields v. Gander*, 734 F.2d 1313 (8th Cir. 1984); *Wellman v. Faulkner*, 715 F.2d 269 (7th Cir. 1983), *cert. denied*, 468 U.S. 1217, 104 S. Ct. 3587, 82 L.Ed.2d 885 (1984).



In considering whether the denial of medical care reaches constitutional significance, courts must determine whether the system of providing medical care evidences a deliberate indifference to the serious medical needs of the inmates. *Estelle v. Gamble, supra*; *Wellman v. Faulkner, supra.*

"Deliberate indifference" may be demonstrated by repeated examples of improper or inadequate medical treatment, interference with prescribed treatment, failure to treat legitimate medical complaints, or by systemic deficiencies in staff, facilities, equipment or procedures. *Wellman v. Faulkner, supra*; *Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980).

The delivery of medical and psychiatric services, the physical facilities and the procedures for diagnosing and treating the serious health needs of the inmates at the Reformatory were previously found to be grossly substandard. The Court noted that serious staff deficiencies existed. The only staff physician also acts as medical director and has a private medical practice. Although he is "on call" 24 hours a day, the record shows examples of his unavailability and refusal to come to the Reformatory when called. Furthermore, he is a native Korean and is unable to communicate effectively in English. The remaining medical staff was found to be performing tasks for which they were not qualified and they were overworked and inadequately supervised. An additional physician position has been authorized for years but unfilled due to the unrealistic salary offered.

The procedures for the delivery of medical care to the inmates was found to be "so insufficient as to guarantee inadequate services." Memorandum of Decision of May

7, 1982 at 14. Medical technicians (a classification not recognized under Indiana law) see between 150 and 190 patients in a few hours, the physician assistants may see 20 to 30 patients in a two hour period, and the physician, out of the 190 patient requests per day, will see approximately 10 patients. Inmates on lockup are denied adequate medical services to an even greater degree. Instances of neglect of serious illnesses for unreasonable lengths of time, improper diagnosis and treatment by unqualified staff, failure to follow prescribed treatment, failure to provide special diets, and discontinuation of prescribed medication are documented in the record. The lack of effective procedures for the delivery of a minimum level of medical care is obvious and intolerable.

The physical facilities and equipment are inadequate, antiquated, obsolete and poorly staffed. The second floor infirmary, available for inmates with minor ailments requiring confinement to bed, has no mechanical ventilation and no medical personnel stationed on the ward. Inmates requiring any more acute care cannot be treated at or near the Reformatory but rather must be transported to Wishard Memorial Hospital in Indianapolis, 40 minutes from the Reformatory. Wishard Hospital provides both in-patient and out-patient services for inmates. Closer hospitalization facilities in Anderson, Indiana are almost never used.

As a result of the insufficient and unqualified medical staff, the inadequate procedures for the delivery of medical services to the inmates, and the inadequate physical facilities, instances of inadequate and improper medical care, interference with prescribed medication and treatment, and a denial of access to medical care for



legitimate medical complaints are commonplace. The record clearly shows that the extensive deficiencies in the medical care provided to the inmates constitute a deliberate indifference to the serious medical needs of the inmates, imposing upon them cruel and unusual punishment.

Similarly grievous deficiencies exist with respect to the availability of psychiatric care. The staff is grossly insufficient, especially in light of the high level of mental illness that occurs statistically in maximum security institutions such as the Reformatory. The mental health care staff contains only one psychiatrist available for diagnostic purposes for three hours per week. The other full-time and part-time staff members, including two psychologists and a behavioral clinician, are unable to prescribe medications and have an anti-drug bias. The intolerable barbaric practice of depriving psychotic inmates of needed medication to control their illnesses and, instead restraining them in beds, spread-eagle fashion, in the event of a seizure or episode of delusion has been prohibited by this court through the preliminary restraining order made permanent by the Order of May 7, 1984.

The insufficient staff coupled with grossly inadequate procedures for the delivery of psychiatric services result in improper or inadequate treatment or in a complete deprivation of treatment for the inmates' serious mental health problems. There is a long waiting list of inmates seeking psychiatric help, no method of rapidly transporting inmates to the only available acute psychiatric hospitalization facilities at the Westville Psychiatric Unit in Westville, Indiana, no follow-up care procedures upon return to the Reformatory, and

frequent discontinuation of prescribed medications. Additionally, 70% of the inmates at the Reformatory have histories of substance abuse, yet only five receive professional counseling and treatment. As in the case of medical care, an additional staff position has been authorized but unfilled due to an uncompetitive salary level.

The systemic deficiencies in the staffing and procedures for the delivery of psychiatric care to the inmate population demonstrate a deliberate indifference to the serious health needs of the inmates and result in cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

3. Safe and Healthful Environment

Inmates are subjected to double-celling and double-bunking with little if any area to sit erect or stand. The cells and dormitories have exceedingly poor lighting, inadequate ventilation, inadequate temperature control, are dirty and odorous and have virtually uncleanable toilets and lavatories. The inmates are denied adequate medical and psychiatric care and are unreasonably deprived of exercise, recreation, education or job opportunities. These aggravated, overcrowded housing conditions were found to violate the Eighth Amendment. Additional aggravating conditions, including hazardous work areas, inadequate precautions against fire, inadequate and unhealthy food services, other hazardous and unhealthy environmental conditions, and lack of protection of inmates, were found to violate state law. These latter conditions also violate federal law.



A. Work Areas

The work areas at the Reformatory were found to be in violation of minimum safety standards required under Occupational Safety and Health Administration (OSHA) regulations. The work areas particularly lacked adequate ventilation, respirators and gloves and the noise levels in some areas far exceeded the maximum allowable. Violations of these minimum standards unreasonably threaten the health and safety of the inmates and inflict upon them unnecessary and wanton pain.

B. Fire Protection

Most, if not all the buildings at the Reformatory pose an imminent threat to the safety of the inmates in case of fire. Improper storage of flammable substances, lack of exit signs, smoke detectors or alarm systems, lack of alternate methods of egress, and inadequate evacuation procedures are documented in the record. Failure to provide reasonable protection against the threat of fire constitutes cruel and unusual punishment. *See Santana v. Collazo*, 714 F.2d 1172 (1st cir. 1983), *cert. denied*, 466 U.S. 974, 104 S. Ct. 2352 (1984). The defendants have systematically failed to provide adequate fire protection, demonstrating a wanton indifference to the health and safety of the Reformatory inmates.

C. Food Services

The kitchen, commissary and food storage areas at the Reformatory are unsanitary and infested with mice and roaches. The kitchen floor was found to be uncleanable due to holes, cracks, crevices, missing tile and gross porosity. Pots and pans were in such poor

repair as to be uncleanable and the food warming tables in the dining area were inoperable. Procedures for providing special diets to inmates requiring such were lacking. The deplorable condition of the facilities and deficiencies in the delivery of food services pose an imminent threat to the health and safety of the inmates in violation of the Eighth and Fourteenth Amendments. *Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981).

D. Environmental Health Problems

In addition to the infestation of the kitchen and food storage areas, the dormitories and one cellblock are infested with birds, flies, and other insects in warm months. Plumbing chases were found to be dirty and ideal for harboring insects and rodents. Lack of hot water in the cells, inadequate ventilation, and unsanitary toilets, showers, and lavatories encourage the spread of communicable diseases and pose additional serious public health threats. Inadequate lighting, especially on the administrative segregation unit, causes eyestrain, hinders sanitation efforts and smacks of unjustified punitive action. These conditions, exascerbated by overcrowding and inadequate opportunities for activity outside the cell or dormitory, fail to meet contemporary standards of decency and impose unnecessary and wanton pain upon the inmates.

E. Inmate Protection

The defendants have an obligation to protect inmates from unreasonable risks of violence or bodily harm from other inmates. *Walsh v. Brewer*, 733 F.2d 473, 476 (7th Cir. 1984). "'[D]eliberate indifference' to violent inmate attacks deprive inmates of their eighth amendment



rights." *Id.* at 476. At the Reformatory, severe forms of violence resulting in a number of fatalities, were noted to occur with distressing frequency.

The security staff at the Reformatory is inadequate to handle the number of confined inmates. The overcrowding and other grievous conditions result in increased tension to the "blowing level," increased incidences of violence, sexual assaults, and aggressive behavior. With an insufficient security staff and inadequate communication system among the prison guards, a lack of control over behavior among inmates is inevitable. The lack of security in the general population has required widespread use of protective custody, despite the additional restrictions and intolerable conditions imposed there. Still, violence persists.

The record clearly demonstrates that the inadequate personal security afforded the inmates constitutes cruel and unusual punishment.

4. Academic and Vocational Education

The inadequacy of academic and vocational education and work programs was previously found to violate state law. The deprivation of rehabilitative programs, however, generally does not constitute cruel and unusual punishment. *Bono v. Saxbe*, 620 F.2d 609 (7th Cir. 1980); *French v. Heyne*, 547 F.2d 974 (7th Cir. 1976). Nevertheless, providing access to rehabilitative programs to general population inmates while denying access to such programs to inmates segregated for nondisciplinary reasons may constitute a violation of the Equal Protection Clause of the Fourteenth Amendment. *Durso v. Rowe*, 579 F.2d 1365 (7th Cir. 1978), *cert. denied*, 439 U.S. 1121, 99 S. Ct. 1033, 59

L.Ed.2d 82 (1979); *French v. Heyne, supra.* If the denial of access to rehabilitative programs for inmates in protective custody does not rationally further some legitimate state interest, the disparate treatment of those inmates may be proscribed. *Durso v. Rowe, supra; French v. Heyne, supra.*

Generally, a rational relationship exists between the legitimate state interest in maintaining prison security and providing protective custody to inmates with limitations on privileges. *Allgood v. Morris*, 724 F.2d 1098 (4th Cir. 1984); *Lovell v. Brennan*, 566 F.Supp. 672 (D.Me. 1983), *affirmed*, 728 F.2d 560 (1st Cir. 1984); *Durrough v. Hogan*, 563 F.2d 1259 (5th Cir. 1977). When the state creates the conditions necessitating the widespread use of protective custody, however, the denial of access to rehabilitative programs is not justified by the state's interest in prison security. *Palmigiano v. Garrahy*, 443 F.Supp. 956 (D.R.I. 1977). *See also Reddin v. Israel*, 455 F.Supp. 1215 (E.D.Wis. 1978). The security interest is not rationally furthered by overcrowding protective custody facilities while overcrowded, understaffed, and other deplorable conditions of confinement persist in the general population.

Such aggravating conditions exist at the Reformatory, resulting in the utter failure to control violence among the inmate population and necessitating extensive use of protective custody. Denying access to rehabilitative programs to the large number of inmates in protective custody is irrational and violates the inmates' rights under the Equal Protection Clause of the Fourteenth Amendment.

In summary, the conditions existing at the Reformatory at the time of and prior to the May 7, 1982 Order



and Memorandum in many respects imposed cruel and unusual punishment upon the inmates or denied certain inmates of their rights to equal protection. The Court recognizes that, since the 1982 order, substantial progress has been made toward correcting the unconstitutional conditions and that the improvements must be considered in fashioning an appropriate remedy. *Ramos v. Lamm*, 639 F.2d at 586. The improvements at the Reformatory noted in detail in the Court's memorandum Order of July 7, 1983, included new housing and health care facility construction, renovation of existing facilities, increased staffing and improved procedures for delivering necessary services and providing exercise, recreation, education and work. The Court, therefore, will modify the order of injunctive relief previously entered in this cause consistent with the constitutional violations found herein and in light of the progress made toward remedying the unconstitutional conditions of confinement.

Dated this 14th day of December, 1984.

\s\ S. HUGH DILLIN
S. HUGH DILLIN, JUDGE

Copies to:

Donald R. Lundberg, William E. Marsh, Legal Services Organization of Indiana, Inc., Suite 300, 107 North Pennsylvania Street, Indianapolis, Indiana, 46204

Linley E. Pearson, Indiana Attorney General, 219 State House, Indianapolis, Indiana, 46204 (David A. Arthur, Deputy)

John Daniel Tinder, United States Attorney, 274 United States Courthouse, Indianapolis, Indiana, 46204 (Harold R. Bickham, Assistant)

James Clute, Civil Rights Division, Department of Justice, P.O. Box 23991, Washington, D. C., 20026-3991

Edith S. Marshall, Department of Justice, HOLC Building, 320 First Street, N.W., Washington, D. C., 20530



IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

---

Cause No. IP 75-677-C

RICHARD A. FRENCH, ET AL., PLAINTIFF

*v.*

EDWARD COHN, ET AL., DEFENDANTS

---

**STIPULATION**

---

Comes now the Plaintiff Class, by Counsel, and comes now the Defendants, in their official and individual capacities, by Counsel, and enter into the following Stipulations:

1. That by its Decision of November 26, 1985, the Seventh Circuit Court of Appeals remanded those portions of the above-referenced cause dealing with fire safety and OSHA standards to this Court, for further proceedings.

2. That, by agreement, counsel for the parties arranged inspections of the Indiana Reformatory by the Indiana State Fire Marshal's office and the Inspector of the Indiana Department of Labor, IOSHA.

3. That a majority of the deficiencies noted by the inspections have been corrected and that the remainder are in the process of correction.

4. That the Defendants will voluntarily commit to use their best efforts to remain in compliance with applicable Fire Safety and IOSHA regulations at the Indiana Reformatory. The term "best efforts" shall include periodic inspections, both by the Reformatory staff and appropriate outside agencies, and taking remedial action, including requesting of funds or obtaining appropriate variances, to remedy deficiencies noted during said inspections.

5. That the parties believe that the above commitment resolves the issues concerning fire safety and OSHA standards raised in the above-referenced cause.

WHEREFORE, the parties, by Counsel, jointly move this Court to approve the above Stipulation and for all other just relief in the premises.

| Counsel for Plaintiff Class | Counsel for Defendants |
|---|---|
| /s/ DONALD R. LUNDBERG | /s/ RONALD J. SEMLER |
| DONALD R. LUNDBERG | RONALD J. SEMLER |
| William Marsh | David A. Arthur |
| Donald Lundberg | Ronald J. Semler |
| | Deputy Attorney General's |

Approved this 6th day of October, 1988.

S.HUGH DILLIN
Judge
United States District Court
Southern District of Indiana



IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

---

Cause No. IP 75-677-C-D/F

RICHARD A. FRENCH, ETC., ET AL., PLAINTIFFS

*v.*

JACK DUCKWORTH, ETC., ET AL., DEFENDANTS

---

[Filed: June 5, 1997]

---

**DEFENDANTS' MOTION TO TERMINATE DECREE**

Defendants, by counsel, David A. Arthur, Deputy Attorney General, for their motion to terminate decree, state:

1. This Court has entered several orders and memoranda with regard to conditions of confinement at the Pendleton Correctional Facility (then named the Indiana Reformatory).

2. On April 26, 1996, the Prison Litigation Reform Act ("PLRA"), Title VIII of the Omnibus Appropriations Act, P.L. 104-134, was signed into law. The PLRA contains specific provisions for the modification and termination of judgments, including the addition of 18 U.S.C. § 3626(b)(2):

> **Immediate termination of prospective relief.**—In any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the

> immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means to correct the violation of the Federal right.

3. An examination of each order and amended order that has been entered in this case, and an examination of the Court's original memorandum entered May 7, 1982, and the memorandum concerning the amended order entered on December 14, 1984, demonstrates that Defendants are entitled to immediate termination of the consent judgment in this case because there was no finding in the record that the relief was narrowly drawn, extends no further than necessary to correct the violation of the Plaintiffs' Eighth and Fourteenth Amendment rights and is the least intrusive means to correct the constitutional violations.

4. The PLRA further provides at 18 U.S.C. § 3626(b)(1)(A) that:

> In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion by any party or intervenor—
>
> > (i) 2 years after the date the court granted or approved the prospective relief.

5. The last order entered in this case granting or approving prospective relief was on October 6, 1988, relating to fire and OSHA standards; therefore, more than two years has passed since the date of granting or approving all prospective injunctive relief in this case.



WHEREFORE, Defendants request that this Court terminate all prospective relief that has been granted or approved in this case and that the Court grant to them all other relief that is just and proper.

Respectfully submitted,

JEFFREY A. MODISETT
Attorney General of Indiana

By: /s/ DAVID A. ARTHUR
DAVID A. ARTHUR
Deputy Attorney
General

**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing Motion has been duly served upon the counsel of record listed below, by United States mail, first-class postage prepaid on this 5th day of June, 1997:

Hamid R. Kashami
Attorney at Law
445 N. Pennsylvania St.
Suite 600
Indianapolis, IN
46204-1806

Kenneth J. Falk
Attorney at Law
Indiana Civil Liberties Union
1031 East Washington Street
Indianapolis, IN
46202-3952

/s/ DAVID A. ARTHUR
DAVID A. ARTHUR
Deputy Attorney General

Office of Attorney General
Indiana Government Center South, Fifth Floor
402 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 232-6286
daa: 139379S4



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

---

No. IP 75-677-C

**CLASS ACTION**

RICHARD A. FRENCH, ET AL., PLAINTIFFS

v.

JACK DUCKWORTH, ET AL., DEFENDANTS

---

**PLAINTIFFS' MOTION FOR A *TEMPORARY RESTRAINING ORDER* OR PRELIMINARY INJUNCTION TO STAY THE AUTOMATIC TERMINATION PROVISION OF THE PRISON LITIGATION REFORM ACT**

---

Plaintiffs respectfully move the Court to issue a temporary restraining order or a preliminary injunction to stay the operation of the automatic termination provision of the Prison Litigation Reform Act (PLRA). In support of this motion, Plaintiffs state:

1. On June 5, 1997, Defendants filed their Motion To Terminate Decree under the Prison Litigation Reform Act of 1995, 18 U.S.C. § 3626(b)(2).

2. Pursuant to this statute, unless there is a ruling to the contrary, within thirty (30) days of filing the motion to terminate, all relief granted by prior judgments of this Court is terminated.

3. A restraining order or a preliminary injunction should issue to prevent the automatic termination provision of the Act from taking effect.

4. The standards for a preliminary injunction are met here:

(a) Plaintiffs will prevail on their claims that the PLRA's automatic termination provision is unconstitutional and unlawful and should not be applied in this instance.

(b) If the automatic termination takes effect, Plaintiffs will be caused irreparable harm for which there is no adequate remedy at law.

(c) The irreparable harm outweighs any harm that Defendants will suffer by the granting of the injunction.

(d) The granting of an injunction in this cause will not harm the public interest and will serve the public interest by enforcing the United States Constitution.

5. In support of this motion, Plaintiffs submit their Response to Defendants' Motion to Terminate Decree and Memorandum in Support of Plaintiffs' Motion for a Temporary Restraining Order or Preliminary Injunction to Stay the Automatic Termination Provision of the Prison Litigation Reform Act which.



WHEREFORE, Plaintiffs request that a temporary restraining order or a preliminary injunction be issued to stay the automatic termination provision of the PLRA, and for all other proper relief.

Respectfully submitted,

June 30, 1997

/s/ HAMID R. KASHANI
HAMID KASHANI
445 North Pennsylvania,
Suite 600
Indianapolis, Indiana 46204
317/ 632-1000

Kenneth J. Falk
Indiana Civil Liberties Union
1031 East Washington Street
Indianapolis, Indiana 46202
317/ 635-4059
Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

On the date shown below, I emailed and mailed, via First Class U.S. Mail, postage prepaid, a copy of this paper to Mr. David A. Arthur, Indiana Government Center South, Fifth Floor, 402 West Washington Street, Indianapolis, Indiana 46204-2770.

June 30, 1997 /s/ HAMID R. KASHANI
HAMID KASHANI



[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

---

Civil Cause No. IP 75-677-C

RICHARD A. FRENCH, ET AL., PLAINTIFF

*v.*

JACK DUCKWORTH, ET AL., DEFENDANTS

---

10:30 A.M.
Indianapolis, Indiana
July 10, 1997

---

BEFORE THE HONORABLE S. HUGH DULLIN

---

Official Reporter's Transcript of
TEMPORARY RESTRAINING ORDER

---

APPEARANCES

FOR THE PLAINTIFFS: HAMID R. KASHANI
SUITE 600
445 North Pennsylvania Street
Indianapolis, IN 46204-1806

-and-

KENNETH J. FALK
Indiana Civil Liberties Union
1031 East Washington Street
Indianapolis, IN 46202-3952

FOR DEFENDANTS: David A. Arthur, AAG
Fifth Floor
Indiana Government Center South
402 West Washington Street
Indianapolis, IN 46204-2770

COURT REPORTER: Martha L. Rodebeck
201 U.S. Courthouse
Indianapolis, IN 46204

MACHINE SHORTHAND/COMPUTER TRANSCRIPT



[2] INDEX


| Miscellaneous Events: | Page |
|---|---|
| Call to Order of the Court | 3 |
| Plaintiffs' opening argument | |
| By Mr. Kashani | 3 |
| Defendants' follow-up remarks | |
| By Mr. Arthur | 6 |
| Plaintiffs' follow-up remarks | |
| By Mr. Kashani | 13 |

[3] CALL TO ORDER OF THE COURT

THE COURT: Well, let's see, we start out with a motion from the state to cancel the previous order of the Court. And we have a TRO. The question is should that be expanded to a preliminary injunction.

Who wants to go first?

MR. KASHANI: I think the TRO is our motion, so–

THE COURT: All right, go ahead.

MR. KASHANI: Section 3626(B)(2) of the—I thought it cannot be yours—says that "the plaintiffs in a prison reform case can move to terminate the Court judgment or the decree if at the time the judgment was entered there was no finding that the relief was narrowly drawn or that we have extended no further than necessary to address the violation," whether or right. That is the basis of the plaintiffs' motion.

Subsection (B)(3) allows the Court to continue with the relief granted previously if there is current or ongoing violation.

Those relate to the merits of the defendants' motion. We, of course, contend that Section (B)(2) is unconstitutional, but the Court has given us until July 31st to supplement our brief and submit a response to the defendants' motion on the merits.

What is at issue here is Section 3626(E)(2).

Section 3626(E)(2) says that 30 days after the defendants filed the motion the prospective relief should be terminated, no [4] further action required to part



four, on the part of anybody; just automatically terminated and done with, or at least the state.

All the district courts in Virginia—Judge Brottman in Virgin Islands to Judge Justice in Texas and the District Court in California—hold this provision unconstitutional regardless of however they have come out on the constitutionality of Section 3626(B)(2).

The reason for the unconstitutionality of 3626(E)(2), which provides for automatic termination is that it violates the separation of powers doctrine and it violates the due process rights of the prisoners.

It violates the separation of powers because it dictates the judgment. As the Supreme Court has noted, the separation of powers was incorporated into the Constitution to correct their rulings of a system of intermingled judical powers where in the old days when legislature is used to pass laws and change the outcome of cases. And that is why we have separation of powers, to stop that.

And as the judge—I believe it was Judge Enslen in Hadix—noted—that PLRA—in issuing a preliminary injunction, that is something which even a court cannot do without a finding of fact or holding some hearing.

The PLRA section says carry it in 30 days, and that is what we objected.

[5] There is also the due process concern. The due process concern is that even though the PLRA mandating a hearing to determine current or ongoing violations to keep the prospective relief, it only allows 30

days for the whole litigation to conclude for terminating the prospective relief.

In a case like this, we'd have to show current or on going violation that is probably going to take us a two or three month trial time, and with all the prehearing discovery requirements it probably is going to be a year of process.

And the courts have held that that provision of the PLRA which covers the judgment in 30 days is unconstitutional because of violation of due process for these reasons.

Of course, the PLRA itself is a product of intolerance and it is enacted in response to hostilities toward prisoners as a disfavored group. As Senator Abraham said in Congressional Record, criminals deserve to be punished, and Senator Reid the more difficult and more unpleasant the prison setting can be the better off we would be.

Well, there is no doubt our clients are criminals, but, you know, the hallmark of any society is how it treats the most unpopular people among any society. And it is unfortunate that they have taken these steps to go against the most unfavored group of people in the country, but at the same time our Constitution requires that even the rights of the least favored people to be respected and that is why we are here, because we [6] have the courts to provide the moment of reflection and decide the issue out of the passion of times.

That is my entire argument.



I am arguing only 3626(E)(2), not the rest of the motion.

* * * * *

[20]

MR. KASHANI: Well, your Honor, if I may, I would like to reply to Mr. Arthur's argument, and also address that issue too.

THE COURT: Okay.

MR. KASHANI: Mr. Arthur's argument generally handles the whole thing altogether. And I want to make it clear that what we are here for is 3626(E)(2) which is automatic termination. Not the motion to terminate the decree. Because the relief granted was not narrowly drawn or to even extend more than was necessary to enforce a federal right. We are going to address that, but today the only issue is the automatic termination. And that is what we are contending is unconstitutional.

And the case cited by Mr. Arthur does not address that [21] issue.

The case of Jenson versus County of Lake does not address that issue.

The courts who have addressed the issue of automatic termination, no matter how eventually they have come out on the issue of whether they [are] upholding PLRA, or the PLRA self-constitutional or constitutional have held that automatic termination, that is, Congress saying that is contained and disposed of within 30 days is unconstitutional.

The case of James versus Lash that Mr. Arthur was referring to was the case decided by Judge Sharp, and in that case Judge Sharp at the end explicitly says that the courts are split on the constitutionality of the PLRA and nobody has presented that question here before me, so I am going to decide that issue.

So that case does not withstand for the fact that the PLRA can be held constitutional.

And they agree that there are courts who have held that PLRA is constitutional; there are courts which have held it unconstitutional. But all of them agree that automatic termination—that's the issue we are here for today—has been held unconstitutional by all courts which have addressed it.

As expected, irreparable harm—of course, the plaintiffs here have a judgment. That's their judgment. And when you take it away by an act of Congress it is terminated in 30 days, that is irreparable harm. When you take someone's property away from [22] them, that's harm.

And, further, there has been a decade of noncompliance before this Court. The records show that. And the defendants have never moved for termination under the Rufo. To show termination, to prove or seek termination under Rufo the defendants have to show substantial compliance. They have never done that.

And plaintiffs will be harmed if the protection of the judgment is taken away.



These defendants are not doing it out of the goodness of their heart. They are doing it at the reformatory because there is a judgment protecting the plaintiffs.

And also, the criteria for granting a preliminary injunction is not just irreparable harm. It also takes into account the possibility of success and a lot of other factors. But possibility of success in this case is very high, because Congress simply cannot say that 30 days after you, the defendant, file a motion in the case the judgment is vacated. Even under Rule 60(B) and—within 30 days that judgment is terminated anyway, no matter what the Court says, no matter what the plaintiffs do, it is just terminated and that is illegal.

The Justice Department originally filed a brief in the case of Plyver, said that Congress lacks the power to dictate absolutely that the judgment already rendered by the court be altered or suspended. Automatically stayed.

[23] The word jurisdiction does not appear in the PLRA, at least not in the section we are dealing with. And Congress cannot do, under the guise of jurisdiction, cannot do with the merits of the case, and the Supreme Court just recently decided the case under the Religious Freedom and Restoration Act, which I will give you a copy, your Honor, which essentially says Congress cannot prescribe the issue or dictate the criteria for deciding constitutional cases.

Of course, that is an issue which we will deal with when the main issue in the case, the defendants' motion, comes before the Court.

But the fact that the Court can alter a final judgment or—actually, I am reading from the Hadix case–the fact that the Court may alter a final judgment under Rufo does not affect the finality of the judgment, nor does it affect the ability of Congress to do so.

The Congress cannot come and dictate the result. And that is what the Section 3626(E)(2) does, disposing of the judgment. And that is what the issue is here. We are not attacking the whole PLRA today.

THE COURT: Okay, thank you.

MR. KASHANI: Did you have any question?

THE COURT: I don't think I did.

Okay, I will take this under advisement.

MR. KASHANI: Your Honor, may we have a copy of those [24] orders that the defendants presented here?

We also have a bunch of orders here.

MR. FAULK: Your Honor, if we might just take a moment to compare and make sure we both have a copy?

THE COURT: Well, you can compare them with Ms. McKnight's. And I am going to see how many I already have and try to get this back to you.

We just notified the government a couple days ago that the constitutionality was in question here. They haven't had a chance to enter an appearance or do anything. So meanwhile, you still have till the 31st to file a answer to the petition, as I understand it. Of



course, if the TRO is not extended as a preliminary injunction, they could argue that the Court's previous judgment has expired while we are waiting to brief the case; correct?

So I think for that reason and for the principal reason that the Court believes that Section 3626(B)(2) is clearly unconstitutional, as found by dozens of other courts. And, therefore, that the plaintiffs are likely to succeed on the merits and the defendants will not be harmed, the TRO is now converted into a preliminary injunction.

And you may tender me an order to that effect.

LAW CLERK POWLICK: Yes.

* * * * *

Mar 6 2000 (12) (11)

Nos. 99-224 and 99-582

Supreme Court, U.S.
FILED
MAR 6 2000
CLERK

In The

# Supreme Court of the United States

CHARLES B. MILLER, ET AL.,

*Petitioners,*

v.

RICHARD A. FRENCH, ET AL.,

*Respondents.*

UNITED STATES OF AMERICA,

*Petitioner,*

v.

RICHARD A. FRENCH, ET AL.,

*Respondents.*

**On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## BRIEF FOR RESPONDENTS

KENNETH J. FALK
*Counsel of Record*
JACQUELYN E. BOWIE
SEAN C. LEMIEUX
E. PAIGE FREITAG
CHRISTOPHER M. GIBSON
Indiana Civil Liberties Union
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059

HAMID R. KASHANI
445 N. Pennsylvania St.
Suite 600
Indianapolis, IN 46204
317/632-1000

STEVEN R. SHAPIRO
American Civil Liberties Union Foundation
125 Broad St.
New York, N.Y. 10004
212/549-2500

ELIZABETH ALEXANDER
National Prison Project of the American Civil Liberties Union Foundation
1875 Conecticut Avenue, N.W.
Washington, D.C. 20009
202/234-4830

*Attorneys for Respondents*

BEST AVAILABLE COPY

43pp

## QUESTIONS PRESENTED

The Prison Litigation Reform Act, 18 U.S.C. § 3626(e) (Supp. III 1997), provides for an automatic stay of any final court order directing prospective relief in a prison conditions case whenever a motion to terminate the order has been filed by defendants and has not been resolved by the trial court within a thirty (30) day period. This period can be extended for an additional sixty (60) days for good cause; however, good cause can not include calendar congestion. The questions presented are:

1. Whether 18 U.S.C. § 3626(e) is unconstitutional as violating the separation of powers because it is a direct legislative suspension of a final judgment with no apparent discretion in the trial court to override the legislative determination that suspension is required in all cases after 90 days, and because it mandates suspension of an injunction without allowing the court to apply facts to law in a case in which Congress has not changed the substantive law?

2. Whether, in order to avoid the serious constitutional question that would otherwise arise, 18 U.S.C. § 3626(e) can be construed in a manner that permits trial judges to retain their traditional equitable power to enjoin the automatic stay in appropriate circumstances?

TABLE OF CONTENTS


| | Page |
|---|---|
| Questions Presented | i |
| Statutory and Constitutional Provisions Involved | 1 |
| Statement of the Case | 1 |
| Summary of the Argument | 8 |
| Argument | 12 |
| I. IF SECTION 3626(e)(2) IS INTERPRETED AS PRECLUDING A FEDERAL COURT'S ABILITY TO AVOID THE AUTOMATIC STAY IT IS UNCONSTITUTIONAL AS VIOLATING SEPARATION OF POWERS | 12 |
| A. Section 3626(e)(2) violates the separation of powers by disrupting the final judgment of an Article III court | 13 |
| B. Section 3626(e)(2) is unconstitutional because Congress is prescribing a rule of decision for the trial court | 20 |
| C. Section 3626(e)(2) violates the separation of powers because, in addition to the specific rules of *Plaut* and *Klein*, it interferes with a core judicial function | 24 |
| II. ALTHOUGH INTERPRETING § 3626(e)(2) AS PRESERVING THE RIGHT OF THE TRIAL COURT TO USE EQUITY TO ENJOIN THE AUTOMATIC STAY WOULD AVOID THE NECESSITY OF DECLARING THE STATUTE UNCONSTITUTIONAL, THE DOCTRINE OF CONSTITUTIONAL DOUBT DOES NOT EASILY APPLY HERE AND THE SEVENTH CIRCUIT'S DECISION IS CORRECT | 30 |
| Conclusion | 35 |




TABLE OF AUTHORITIES


| CASES: | Page |
|---|---|
| *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) | 31 |
| *Buckley v. Valeo*, 424 U.S. 1 (1976) | 12, 13 |
| *Cagle v. Hutto*, 177 F.3d 253 (4th Cir. 1999), *petition for cert. filed* | 28 |
| *Califano v. Yamasaki*, 442 U.S. 682 (1975) | 31 |
| *Carlisle v. United States*, 517 U.S. 416 (1996) | 27 |
| *Cherokee Nation v. United States*, 270 U.S. 476 (1926) | 22 |
| *City of Boerne v. Flores*, 521 U.S. 507 (1997) | 18 |
| *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833 (1986) | 9, 13, 31 |
| *French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982) | 1 |
| *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985), *cert. denied*, 479 U.S. 817 (1986) | 2 |
| *Gutierrez de Martinez v. Lamagno*, 515 U.S. 433 (1995) | 22, 23 |
| *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998) | 6, 8, 13, 18, 28, 31 |
| *Hanna v. Plumer*, 380 U.S. 460 (1965) | 25 |
| *Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792) | *passim* |
| *Hecht v. Bowles*, 321 U.S. 321 (1944) | 32 |
| *Honig v. Doe*, 484 U.S. 305 (1988) | 32 |
| *In re Grand Jury Proceedings*, 605 F.2d 750 (5th Cir. 1979) | 27 |

TABLE OF AUTHORITIES – Continued

Page

*In re Grand Jury Proceedings*, 946 F.2d 746 (11th Cir. 1991) ..... 27

*In re Siggers*, 132 F.3d 333 (7th Cir. 1997) ..... 27

*Kalb v. Feuerstein*, 308 U.S. 433 (1940) ..... 19

*Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991) ..... 15

*Loving v. United States*, 517 U.S. 748 (1996) .... 9, 12, 29

*Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) .... 24

*Mistretta v. United States*, 488 U.S. 361 (1989) .....12, 25

*Morrison v. Olson*, 487 U.S. 654 (1988) .....13, 14

*Nixon v. Administrator of General Services*, 433 U.S. 425 (1977) .....24, 25

*Pennhurst State School and Hospital v. Halderman*, 456 U.S. 89 (1984) ..... 1

*Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1998) .....11, 30

*Pittson Coal Corp. v. Sebben*, 488 U.S. 105 (1988) ..... 34

*Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) ...*passim*

*Pope v. United States*, 323 U.S. 1 (1944) ..... 16

*Robertson v. Seattle Audubon Society*, 503 U.S. 435 (1992) ..... 16

*Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) ..... 13

*Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999) ... 6, 13, 31

*Scripps-Howard Radio v. Federal Communication Commission*, 316 U.S. 4 (1942) ..... 33



TABLE OF AUTHORITIES – Continued

Page

*Sibbach v. Wilson & Co.*, 312 U.S. 1 (1941) ..... 25

*State of Pennsylvania v. The Wheeling and Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855) ... 16, 17, 18, 21

*Taylor v. United States*, 143 F.3d 1178 (9th Cir.), *reh'g granted and opinion withdrawn*, 158 F.3d 1017 (9th Cir. 1998), *on reh'g*, 181 F.3d 1017 (9th Cir. 1999) ..... 17

*United States v. O'Grady*, 89 U.S. (22 Wall.) 647 (1874) ..... 25

*United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871) ..*passim*

*United States v. Padelford*, 76 U.S. (9 Wall.) 531 (1870) ..... 20

*United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980) ..... 22

*West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83 (1991) ..... 32

UNITED STATES CONSTITUTION:

Article I, § 8 ..... 19, 22, 25

Article III, § 1 ..... 1, 10, 12, 15, 25

STATUTES:

11 U.S.C. § 362 (1994) ..... 19, 20, 26

18 U.S.C. § 3161(h) (1994) ..... 27

18 U.S.C. § 3162 (1994) ..... 27

18 U.S.C. § 3626 (Supp. III 1997) ..... 1, 3, 26

18 U.S.C. § 3626(a) (Supp. III 1997) ..... 3

TABLE OF AUTHORITIES – Continued

Page

18 U.S.C. § 3626(b) (Supp. III 1997) .....3, 4, 17, 18

18 U.S.C. § 3626(e) (Supp. III 1997) ..... *passim*

28 U.S.C. § 1292(a)(1) (1994) .....5, 33

28 U.S.C. § 1826 (1994) ..... 27

28 U.S.C. § 2244(b)(3)(D) (Supp. III 1997) ..... 27

29 U.S.C. § 107 (1994) ..... 26

Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321-66 to 110 Stat. 1321-77 (1996) ..... 3

Pub. L. No. 105-119, § 123(a)(3)(C), (1997)..... 4

LEGISLATIVE HISTORY:

143 Cong. Rec. S12269 (Nov. 9, 1997) ..... 19

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 65(b) ..... 26

OTHER AUTHORITIES:

Dean Alfange, Jr., *The Supreme Court and the Separation of Powers: A Welcome Return to Normalcy?*, 58 GEO. WASH. L. REV. 668, (1990) ..... 29

Ira Bloom, *Prisons, Prisoners and Pine Forests: Congress Breaches the Wall Separating Legislative from Judicial Power*, 40 ARIZ. L. REV. 389 (1998)..... 22

THE FEDERALIST No. 47 (James Madison) (Modern Library ed. 1937) ..... 12



TABLE OF AUTHORITIES – Continued

Page

Brian M. Hoffstadt, *Retaking the Field: The Constitutional Constraints on Federal Legislation that Displaces Consent Decrees*, 77 WASH. U. L. Q. 53 (1999) ..... 22

Lawrence G. Sager, *Klein's First Principle: A Proposed Solution*, 86 GEO. L. J. 2525 (1998) ..... 22

## STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

In addition to the text of the Prison Litigation Reform Act, 18 U.S.C. § 3626 (Supp. III 1997), relevant portions of which are reprinted in the brief of petitioners Charles Miller, *et al.*, at 2-4, this case also involves the separation of powers as mandated by Article III, § 1 of the United States Constitution, which provides, in pertinent part:

> The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

## STATEMENT OF THE CASE

1. In 1975, the respondent prisoners (hereinafter referred to as "the prisoners") at the Indiana Reformatory (now known as the Pendleton Correctional Facility) brought suit against the predecessors in office of petitioners Miller, *et al.* (hereinafter referred to as "the State"). The original complaint alleged that conditions at the facility violated state and federal law, including the United States Constitution. After a trial, the district court found violations of both the Constitution and state law and entered a remedial order to correct the violations. *French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982). The State appealed to the Seventh Circuit, which remanded the case to the trial court for reconsideration in light of this Court's intervening decision in *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89 (1984).

On remand, the trial court entered a new memorandum decision reaffirming its earlier constitutional determination and further indicating that a number of the state law violations were also violations of the Eighth Amendment. (Joint Appendix [hereinafter "J.A."] at 27-42). The trial court also modified its prior injunctive relief in recognition of progress that had been made by the State in remedying earlier violations. (J.A. 41).

When the State again appealed, the Seventh Circuit affirmed the trial court in part and vacated in part. *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985), *cert. denied*, 479 U.S. 817 (1986). Most significantly, the Seventh Circuit agreed with the trial court that the conditions at Pendleton resulted in cruel and unusual punishment in violation of the Eighth Amendment. *Id.* at 1252-58. These conditions included brutal mechanical restraints, lack of space and furnishing for prisoners, unwholesome food, continuous threats to safety, and medical neglect. *Id.* Based on these findings, the Seventh Circuit upheld those portions of the remedial injunction entered by the trial court that had: ordered a comprehensive overhaul of the medical staff (*id.* at 1254-55); ordered an immediate modification of mechanical restraint practices which had led to inmates being chained, spread-eagled, to their beds for up to 2½ days (*id.* at 1253-54); ordered an end to double celling, which had caused gross overcrowding and deplorable and unsafe conditions (*id.* at 1251-53); and ordered the State to submit a plan to ensure that there were sufficient security personnel at the institution to insure that the inmates were safe. (*Id.* at 1257). Other portions of the trial court's order were reversed.



The last substantive modifications of the trial court's order occurred on October 6, 1988, when the parties entered into a stipulation concerning fire safety and OSHA standards at Pendleton (J.A. 43).

2. The Prison Litigation Reform Act of 1995 (hereinafter "PLRA") was enacted in 1996 as part of Pub. L. No. 104-134 (§§ 801-810), 110 Stat. 1321-66 to 110 Stat. 1321-77. Relevant portions are codified at 18 U.S.C. § 3626. It became effective on April 26, 1996.

The PLRA imposes limits on future prospective relief by requiring that any relief in prison conditions cases designed to remedy the violation of a federal right must: extend no further than necessary to correct a federal right; be narrowly drawn; and be the least intrusive means necessary to correct the violation of the federal right. 18 U.S.C. § 3626(a)(1) (Supp. III 1997).

These new limits on "prospective relief" apply to final judgments as well as to future ones. Thus, the PLRA specifically provides that any final judgment for prospective relief entered without the above requisite findings shall be "immediately terminated" upon motion by the defendant. 18 U.S. C. § 3626(b)(2) (Supp. III 1997). In addition, defendants may move to terminate prospective relief, even if the relief is embodied in a final judgment supported by the requisite findings, if two years has passed since the original entry of prospective relief or the passage of the PLRA or if one year has passed since a prior order denying termination of relief. 18 U.S.C. § 3626(b)(1) (Supp. III 1997). However, motions to terminate under (b)(1) and (b)(2) are subject to the limitation in

18 U.S.C. § 3626(b)(3) (Supp. III 1997), which provides that the

> "[p]rospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation."

The PLRA therefore contemplates a process in which, after a termination motion is filed, the trial court reviews the previous relief and, if necessary, conducts a hearing or does whatever else is necessary to create a record to determine if the requirements of 18 U.S.C. § 3626(b)(3) are met. 18 U.S.C. § 3626(e)(1) (Supp. III 1997) provides that the trial court is to rule promptly on any termination motion and that mandamus is available to the aggrieved party to challenge a failure to rule. However, the statute also provides that if the trial court does not rule on the termination motion within thirty (30) days after the motion is filed, all prospective relief is stayed until the court enters a final order ruling on the pending motion. 18 U.S.C. § 3626(e)(2). While this case was pending on appeal, the PLRA was modified by P.L. 105-119, § 123(a)(3)(C), codified at 18 U.S.C. § 3626(e)(3) (Supp. III 1997), which permits the trial court to postpone the automatic stay for not more than sixty (60) days upon a showing of good cause. The statute further provides that "[n]o postponement shall be permissible because of general congestion of the court's calendar." *Id.* Other than this sixty (60) day extension, any order which stays, suspends or otherwise delays the automatic stay of 18



U.S.C. § 3626(e)(2) is immediately appealable pursuant to 28 U.S.C. § 1292(a)(1) (1994).

3. The State filed its Motion to Terminate Decree on June 5, 1997. (J.A. 45). On July 3, 1997, the prisoners filed and received a temporary restraining order. (J.A. 4). On July 11, 1997, after hearing, the trial court entered a preliminary injunction against 18 U.S.C. § 3626(e)(2) and ordered that, pending resolution of the termination motions, "there shall be no stay of prospective relief in this matter and the parties shall continue to comply with this Court's prior orders and judgments until further orders of the Court." (Appendix to Petition for Writ of Certiorari of the State at 10-11 [hereinafter "State's App.]).

The State's original termination motion has remained in the trial court during the pendency of this appeal. The termination motion was initially set for hearing in the trial court on December 13, 1999. However, following an agreed motion by all parties, including the United States, the hearing was postponed until March 27, 2000. It was rescheduled on the prisoners' motion to June 27, 2000.

4. On appeal, the Seventh Circuit first addressed the statutory construction argument advanced by the Justice Department. In order to avoid what it conceded would be serious constitutional issues, the Justice Department urged an interpretation of § 3626(e)(2) that would allow the trial court to enjoin the automatic stay in appropriate

cases and thereby preserve its traditional equitable powers. (State App. at 21-22).[1]

Although sharing the Justice Department's constitutional concerns, the Seventh Circuit rejected its interpretation of the statutory language. Instead, the court ruled that the statutory language precluded the trial court from doing anything but entering the stay after the 30 or 90 day period expired. In reaching this conclusion the Seventh Circuit acknowledged that its interpretation differed not only from that promoted by the Justice Department, but that it also differed from the conclusion of the Sixth Circuit in *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998). (State's App. at 20-23).[2]

The Seventh Circuit panel explained its conclusion on the statutory construction issue by noting that "[e]ven though we do not lightly assume that Congress meant to restrict the equitable powers of the federal courts, we

---

[1] The panel noted that:

> the United States is of the view that (e)(2) would be an unconstitutional violation of either the separation of powers doctrine or the prohibition against legislative suspension of a particular judgment if (e)(2) really required automatic stays. The United States argues, however, that the automatic stay provision should be read to instruct a court reviewing prospective relief that the court should – but is not required to – stay the relief, an interpretation that avoids the constitutional flaws.

(State's App. at 22).

[2] Subsequent to the panel's decision in this case the Fifth Circuit also agreed with the Justice Department's interpretation of § 3626(e)(2). *See, Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999).



find it impossible to read this language as doing anything less than that." (State's App. at 23).

Having concluded that the automatic stay was indeed mandatory and not subject to modification or delay by a trial court, the Seventh Circuit affirmed the district court's determination that the statute was unconstitutional. The court acknowledged that Congress can prescribe rules of practice and procedure which bind the federal courts. (State's App. at 25). However, the court found that 18 U.S.C. § 3626(e)(2) does more because it ties a substantive judicial outcome to a legislative time restriction without allowing the trial court to do anything to preserve the status quo in whole or in part even though it retains jurisdiction of the case. (State's App. at 25-28). The provision was deemed to be unconstitutional for two reasons. First, it violates the principle established in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), that Congress cannot give other branches the power to review final decisions of Article III courts. Section 3626(e)(2) violates this rule since "it is a self-executing legislative determination that a specific decree of a federal court- . . . must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place. This amounts to an unconstitutional intrusion on the power of the courts to adjudicate cases." (State's App. at 29).

Additionally, the Seventh Circuit found that § 3626(e)(2) violates the principle established in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), where the Court held that, although Congress has the power to change underlying law, it does not have the power to impose a rule of decision for pending cases. While the

termination petition is pending, § 3626(e)(2) "does mandate a particular rule of decision: the prospective relief must be terminated. In our view, this falls comfortably within the rule of *Klein*, and as such, it exceeds the power of the legislative branch." (State's App. at 30).

Recognizing that its decision conflicted with *Hadix*, the panel circulated its opinion among all active judges to determine if the matter should be reheard *en banc* pursuant to Seventh Circuit Rule 40(e). A majority of the judges in active service did not vote to hear the case *en banc*. (State's App. at 33). However, Chief Judge Posner and Judges Manion and Easterbrook dissented from this determination. Although the dissenters agreed with the panel that § 3626(e)(2) could not be interpreted as giving courts the power to enjoin the stay, the dissenters argued that § 3626(e)(2) was nothing more than a procedural rule implementing new substantive law. Accordingly, the dissenters did not perceive a separation of powers problem.

## SUMMARY OF THE ARGUMENT

I. Both the majority and dissenters below, joined by the State of Indiana in this Court, conclude that the automatic stay, 18 U.S.C. § 3626(e)(2), is indeed automatic and is not subject to any stay or other equitable modification by the trial court. If the statute is interpreted in this way, it is unconstitutional as violating the separation of powers.

The separation of powers doctrine does not demand that an absolute wall be erected between each branch of government. Instead, the key question is a functional one:



has one branch of the government intruded on the essential and central prerogatives of another? *Loving v. United States*, 517 U.S. 748, 757 (1996). The concern prompted by such an intrusion is that the institutional integrity of the Judicial Branch is threatened by the action of a coordinate branch. *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 851 (1986). Section 3626(e)(2) gives a trial court only a brief period of time to rule on pending termination motions before they are automatically stayed. If § 3626(e)(2) mandates an automatic stay after that brief passage of time with no ability of a court to enjoin its operation after weighing the equities, it threatens core judicial functions and attacks the institutional integrity of the judiciary in three distinct, but interrelated, ways.

A. As construed by the Seventh Circuit, § 3626(e)(2) represents an effort by the Legislative Branch to automatically terminate, albeit temporarily, the final judgment of an Article III court. More than two centuries ago, this Court in *Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792), established the principle that Congress may not direct a suspension of a judicial decision. This principle has been continuously recognized, and in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), this Court proclaimed that legislative reopening of a final judgment violates separation of powers principles. Of course, Congress may prescribe substantive rules to be applied prospectively, and injunctive judgments that reach into the future may be subject to the new law. However, § 3626(e)(2) does not create a new substantive rule of law for a court to apply. Nor is it a procedural rule in any ordinary sense. Rather, as interpreted by the Seventh Circuit, it entirely displaces the

role of the court and replaces that role with the Congressional mandate that a final judgment be suspended. The court has no judicial role whatsoever since the stay is automatic and outside of its control. This violates the specific separation of powers principles expressed in *Hayburn's Case* and *Plaut* in that final judgments are being affected retroactively.

B. Section 3626(e)(2) also violates another separation of powers principle: Congress cannot prescribe a rule of decision for a court. This principle, first expressed in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), prevents Congress from compelling a specific judicial outcome in the government's favor, without giving any authority to the courts to affect the outcome, regardless of the circumstances. Again, *Klein* is not violated if Congress amends applicable law. But, § 3626(e)(2) does not represent an amendment of substantive law for courts to use in evaluating the continuing propriety of prospective relief involving prison conditions cases. Instead, it is a mandate from Congress that a decision, albeit temporary, in an ongoing case must be made in favor of the government.

C. The common thread uniting *Hayburn's Case*, *Plaut*, and *Klein* is that they all represent cases where this Court emphasized that the separation of powers precludes a coordinate branch of government from interfering with a core judicial function. Section 3626(e)(2) impinges upon the core function of Article III courts, the power to hear a case and apply relevant law to applicable facts. Section 3626(e)(2) is not a procedural rule regulating the courts. Nor is it a substantive change in the law for courts to apply to facts. It is, instead, a direct mandate from Congress that a final order be suspended with no



apparent ability for a court to affect that legislative determination. It thus represents an effort by Congress to intervene in an ongoing case while stripping the court of its ability to act in the case. This act of legislative aggrandizement is unique and is easily distinguishable from other statutes which impose deadlines that are either non-binding or that apply to non-final judgments. In no other existing statute has Congress presumed to retroactively reach into a final judgment and order it suspended with no ability in a court to affect the suspension order. This interferes with the core function of the judiciary and is further evidence that the statute is unconstitutional.

II. The United States recognizes that § 3626(e)(2) presents serious constitutional questions and urges this Court, under the principle of constitutional doubt, to interpret the statute in a manner that would avoid the constitutional difficulty. Specifically, the United States argues that the statute must be interpreted to allow trial courts to retain their equitable authority, under proper circumstances, to enjoin the operation of the automatic stay. While the prisoners would welcome any view of the statute which would allow district courts to recognize that an automatic stay can cause irreparable harm in particular cases, and which would therefore allow a stay of the stay, the doctrine of constitutional doubt can be utilized only if there is sufficient ambiguity in the statute that it is actually susceptible to two constructions. *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998). A review of the language of the statute and the limited legislative history leads to doubt that this statute can be stretched this far. The trial court and the

court of appeals properly found § 3626(e)(2) to be unconstitutional.

## ARGUMENT

### I. IF SECTION 3626(e)(2) IS INTERPRETED AS PRECLUDING A FEDERAL COURT'S ABILITY TO AVOID THE AUTOMATIC STAY IT IS UNCONSTITUTIONAL AS VIOLATING SEPARATION OF POWERS

The essential purpose of Article III was laid out in THE FEDERALIST No. 47. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." THE FEDERALIST No. 47 at 313 (James Madison) (Modern Library ed., 1937). Nevertheless, this Court has rejected "the notion that the three Branches must be entirely separate and distinct." *Mistretta v. United States*, 488 U.S. 361, 380 (1989). The three branches are not hermetically sealed from one another since the founders understood that this "would preclude the establishment of a Nation capable of governing itself effectively." *Buckley v. Valeo*, 424 U.S. 1, 122 (1976) (per curiam). What is key is that "one branch of the Government may not intrude upon the central prerogatives of another." *Loving*, 517 U.S. at 757.

In cases involving intrusion on the prerogatives of the judiciary, two particular concerns have stood out. First, this Court has been vigilant to ensure that the judiciary not be given "tasks that are more properly



accomplished by [the other] branches." *Morrison v. Olson*, 487 U.S. 654, 680-81 (1988). Secondly, this Court has insisted that no branch do anything which "impermissibly threatens the institutional integrity of the Judicial Branch." *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 851 (1986). Simply put, the separation of powers prevents "the encroachment or aggrandizement of one branch at the expense of the other." *Buckley*, 424 U.S. at 122.

Contrary to the interpretation given to it by the Justice Department and the courts in *Hadix* and *Ruiz*, both the panel and the dissenters in the Seventh Circuit agreed that the language and legislative history of § 3626(e)(2) was not elastic enough to encompass a right in the trial court to enjoin the operation of the automatic stay. If the statute is interpreted as mandating a stay without any ability in the trial court to modify its terms, it is unconstitutional as violating the separation of powers.

#### A. Section 3626(e)(2) violates the separation of powers by disrupting the final judgment of an Article III court

The final judgment which the State seeks to terminate is exactly that, a final judgment. Permanent injunctive relief, for which all appeals have been exhausted, and final consent decrees are final judgments. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 391 (1992). In entering its judgment in this case, the trial court found that serious and systemic constitutional violations existed at the Pendleton Correctional Facility. Had § 3626(e)(2) not been enjoined in this case the court's final judgment would

have been automatically suspended, with no authority in the trial court to affect that suspension. Thus, the prisoners would have been deprived of the benefit of this final judgment, not because of any judicial finding that the constitutional violations had been cured, but solely by virtue of the automatic stay that Congress imposed without regard to any particular facts or circumstances. This Court has often recognized that attempts by Congress to interfere, retroactively, with judicial decisions violate the separation of powers. Section 3626(e)(2) is another attempt to interfere, retroactively, with a final decision. It is therefore unconstitutional.

In *Hayburn's Case*, 2 U.S. (2 Dall) 408 (1792), an act of Congress provided that courts would set pensions for disabled Revolutionary War veterans but that the Secretary of War had the discretion to either adopt or reject the judicial findings. This Court did not resolve the constitutionality of the statute since the statute was changed during the pendency of the appeal. 2 U.S. (2 Dall.) at 409. However, the reported decision contains the opinions of three circuit courts, on which five Justices sat, which address the constitutionality of the statute, and the circuit court rulings "have since been taken to reflect a proper understanding of the role of the Judiciary under the Constitution." *Morrison v. Olson*, 487 U.S. at 677, n. 15. The opinion of the Circuit Court for the District of North Carolina, consisting of Justice Iredell and District Judge Sitgreaves, noted that "no decision of any court of the United States can, under any circumstance, in our opinion, agreeable to the constitution, be liable to a revision, or even suspension, by the legislature itself, in whom no judicial power of any kind appears to be vested . . . " 2



U.S. (2 Dall.) at 412. And, the opinion of the Circuit Court of the District of Pennsylvania, consisting of Justices Wilson and Blair and District Judge Peters, noted that granting a coordinate branch the right and ability to revise judgments of the courts would be "radically inconsistent with the independence of that judicial power which is vested in the courts; and consequently, with that important principle which is so strictly observed by the constitution of the United States." 2 U.S. (2 Dall.) at 411. In the two hundred years since, the basic principle in *Hayburn's Case*, that other branches cannot revise or suspend the judgments of Article III courts, has never been questioned.

Most recently, in *Plaut v. Spendthrift Farms, Inc., supra*, this Court considered an attempt by Congress to overturn this Court's decision in *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991), which had held that claims under § 10(b) of the Securities Exchange Act of 1934 had to be commenced within one year of the discovery of the violation and within three years of the violation itself. This holding had resulted in dismissal of an earlier case brought by the petitioners in *Plaut*. Their claims, however, were seemingly resurrected when Congress amended federal law to change the limitation period of § 10(b) actions and which further allowed cases that had previously been dismissed to be reinstated if the basis for their earlier dismissal was because they were time barred. The *Plaut* Court struck down this amendment as a violation of separation of powers since it had the affect of interfering with a final determination of an Article III court. The challenged amendment, this Court

noted, "does no more and no less than 'reverse a determination once made in a particular case.' The Federalist No. 81, p. 545 (J. Cooke ed. 1961). Our decisions stemming from *Hayburn's Case* . . . have uniformly provided fair warning that such an act exceeds the powers of Congress." *Id.*, 514 U.S. at 225. More specifically, the Court held, separation of powers principles are violated when a judgment is "legislatively rescinded." *Id.*, 514 U.S. at 228.

Of course, Congress has the right to enact changes in substantive law that courts must apply prospectively. *Robertson v. Seattle Audubon Society*, 503 U.S. 435 (1992); *Pope v. United States*, 323 U.S. 1, 9 (1944) ("We perceive no constitutional obstacle to Congress' imposing on the Government a new obligation where there had been none before . . . "). But nothing in that principle authorizes Congress to reopen a final judgment or direct the suspension of an injunctive decree without any change in the substantive law. This distinction is critical to understanding this Court's opinion in *State of Pennsylvania v. The Wheeling and Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855), which addressed the issue of prospective relief altered by Congress. In a prior appeal, this Court had affirmed a lower court decision holding that a certain bridge erected pursuant to an act of the State of Virginia over the Ohio River was too low and was an obstruction to river traffic. The earlier case directed that the bridge be raised or removed since it interfered with the navigation of the Ohio River as regulated by Congress. Following the earlier case, Congress changed federal law by enacting legislation declaring the bridge to be a lawful structure at its original elevation and further declaring it to be a post



road. The *Wheeling* Court acknowledged the principle, later recognized in *Plaut*, that "the act of Congress cannot have the effect and operation to annul the judgment of the court already rendered, or the rights determined thereby in favor of the plaintiff . . . When they have passed into judgment the right becomes absolute, and it is the duty of the court to enforce it." 59 U.S. (18 How.) at 431. However, the Court found that the earlier judgment was executory and as a continuing decree it could be prospectively modified by changes in law. 59 U.S. (18 How.) at 430-431. *Wheeling Bridge* continues to stand for the proposition that Congress may enact legislation which alters "the prospective effect of injunctions entered by Article III courts." *Plaut*, 514 U.S. at 232. A defendant cannot be bound in perpetuity to obey a federal law that Congress subsequently rewrites so that it no longer applies.[3]

---

[3] Courts which have upheld the constitutionality of the PLRA's immediate termination provision, 18 U.S.C. § 3626(b)(2) (Supp. III 1997), have interpreted *Wheeling Bridge* as allowing Congress to impose new requirements for the future maintenance of injunctive relief in prison conditions cases and that it is therefore appropriate and constitutional to require courts to determine if existing decrees meet these new conditions. (*See* cases cited in Brief of State at 28, n. 9. A contrary opinion was issued by the panel decision in *Taylor v. United States*, 143 F.3d 1178 (9th Cir.), *rehearing granted and opinion withdrawn*, 158 F.3d 1017 (9th Cir. 1998), *on rehearing* 181 F.3d 1017 (9th Cir. 1999). The *en banc* majority found that the matter was moot.) The circuits in these cases have misapplied this principle since *Wheeling Bridge* requires new substantive law to apply, and in the case of the PLRA there has been no change in the Eighth Amendment which is the substantive law underlying both consent decrees and judgments in prison litigation. Of

But, contrary to the argument of the State, this principle, derived from *Wheeling Bridge*, has no application here.

Unlike the legislation in *Wheeling Bridge*, Congress, in § 3626(e)(2), does not purport to give new law to a court with which to judge the continued validity of a final judgment. The notion that Congress can affect prospective relief with new legislation presupposes that the legislation imposes a new obligation which is then applied prospectively by the court to the particular case before it. If new legislation does this, by giving the court new law to apply, it in no way suspends the prior decision of the court. It is in no way retroactive. However, if Congress reaches back with new legislation to change a final decision or to suspend it, *Hayburn* and *Plaut* principles are violated because new law is not being applied prospectively. Rather, there is only the suspension of the current decree. In *Hadix*, the court of appeals recognized that, if the automatic stay were to be interpreted as precluding any ability in the trial court to enjoin it, *Hayburn-Plaut* principles would be violated since the automatic stay would then result in "direct legislative suspension of orders of Article III courts . . . " 144 F.3d at 941. As both

---

course, Congress can not dictate the meaning of the Eighth Amendment. *See, e.g., City of Boerne v. Flores*, 521 U.S. 507 (1997). Section 3626(b)(2) has therefore not effected a change in the law, other than Congress' mandate that relief be terminated, and it is therefore also unconstitutional. But, the question of the validity of the immediate termination provision of § 3626(b)(2) is not before the Court. The only question is the validity of the automatic stay provision of § 3626(e)(2).



the Sixth and Seventh Circuits have recognized, the automatic stay does not require a court to apply new law prospectively. Instead, it operates as a legislative injunction against on-going relief without affording any judicial role in the process whatsoever. This is unconstitutional.

The State argues that § 3626(e)(2) is necessary to give an incentive for a district court to rule promptly on motions to terminate. Of course, § 3626(e)(1), which subjects a court to mandamus if a ruling is not made promptly, illustrates that a judicial remedy can be provided to control a dilatory court.[4] It is not for Congress to provide judicial incentives when the "incentives" infringe on the judiciary's Article III powers.

In proposing the automatic stay, the sponsor of § 3626(e)(2) noted that it was based on the automatic stay in bankruptcy. 11 U.S.C. § 362 (1994). 143 Cong. Rec. S12269 (Nov. 9, 1997) (Sen. Abraham). However, there are significant differences between the bankruptcy stay and the automatic stay under the PLRA. First, as the Court recognized in *Kalb v. Feuerstein*, 308 U.S. 433 (1940), bankruptcy is different because Article I, § 8 of the Constitution gives Congress exclusive power to "establish uniform laws on the subject of bankruptcies throughout the United States." Therefore, Congress, in the exercise of its plenary power over bankruptcy, may constitutionally require other litigation to be stayed. *Kalb*, 308 U.S. at 438-39. Moreover, the bankruptcy stay is not analogous to

---

[4] Despite the State's complaints concerning the delay in the district court's ruling in this case, the State has never taken advantage of the mandamus remedy.

the PLRA's automatic stay since in the bankruptcy context the judiciary remains able to terminate, annul, modify or condition the stay. 11 U.S.C. § 362(d). Finally, as the United States recognizes (Brief of United States at 34-35), the existence of the bankruptcy statute pre-dates the cases which are stayed by the bankruptcy stay. There is therefore no retroactivity since every judgment that has been issued has built into it the possibility of a stay through bankruptcy. Assuming that § 3626(e)(2) is interpreted as it is written, this is a power which Congress has stripped from the courts. The retroactive and automatic suspension of a judicial order by Congress violates the separation of powers.

**B. Section 3626(e)(2) is unconstitutional because Congress is prescribing a rule of decision for the trial court**

In *United States v. Klein, supra,* the Court found that Congress had overstepped its bounds in attempting to control the authority of the courts. Congress had earlier passed a statute providing that property which had been seized in the states that had seceded would be returned to its owner, upon filing a properly supported claim in the Court of Claims, provided that the owner had "never given any aid or comfort to the present rebellion." 80 U.S (13 Wall.) at 131. In a prior case, *United States v. Padelford,* 76 U.S. (9 Wall.) 531 (1870), this Court had agreed that recipients of a presidential pardon could not be considered as having given any aid or comfort. Congress responded immediately by enacting legislation which provided that proof of the pardon was not admissible in



Court of Claims litigation as evidence that the recipient had not given aid or comfort and that, further, acceptance of the pardon would be deemed to be proof that the recipient did in fact provide aid and comfort. 80 U.S. (13 Wall.) at 133-34. Finally, the statute provided that upon proof that a pardon was received, both the Court of Claims and Supreme Court would be deprived of further jurisdiction of the case. *Id.*

The Court began its decision in *Klein* by recognizing that Congress has the power to organize and establish lower courts and to control their jurisdiction. 80 U.S. (13 Wall.) at 145. Therefore, Congress could determine that appeals could not be pursued from Court of Claims cases generally. *Id.* But, the Court also recognized in *Klein* that Congress was not regulating jurisdiction; instead it was attempting to affect the decision in particular cases. "It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power. The court is required to ascertain the existence of certain facts and thereupon to declare that its jurisdiction on appeal has ceased . . . What is this but to prescribe a rule for the decision of a cause in a particular way?" 80 U.S. (13 Wall.) at 146. The Court took pains to contrast *Wheeling Bridge* where there was no rule of decision "but the court was left to apply its ordinary rules to the new circumstances created by the act. In the case before us no new circumstances have been created by legislation. But the Court is forbidden to give the effect to evidence which, in its own judgment, such evidence should have . . . " 80 U.S. (13 Wall.) at 147.

The precise meaning of *Klein* and how it informs cases today has been the subject of much scholarly debate. *See, e.g.*, Ira Bloom, *Prisons, Prisoners and Pine Forests: Congress Breaches the Wall Separating Legislative from Judicial Power*, 40 ARIZ. L. REV. 389, 403-04 (1998); Brian M. Hoffstadt, *Retaking the Field: The Constitutional Constraints on Federal Legislation that Displaces Consent Decrees*, 77 WASH. U. L.Q. 53, 66 (1999); Lawrence G. Sager, *Klein's First Principle: A Proposed Solution*, 86 GEO. L. J. 2525 (1998). However, a review of this Court's interpretations of *Klein* makes it clear that *Klein* concerns arise when Congress compels a judicial outcome in the government's favor without giving authority to the courts to evaluate or affect the outcome, regardless of the circumstances.

For example, in *United States v. Sioux Nation of Indians*, 448 U.S. 371, 404 (1980), the Court noted that the constitutional infirmity in *Klein* was, in part, that Congress had "prescribed a rule of decision in a case pending before the courts, and did so in a manner that required the courts to decide a controversy in the Government's favor."[5] In *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 430 (1995), this Court examined whether the Attorney

---

[5] In *Sioux Nation* the Court held that Congress could pass a law which waived the government's defense of *res judicata*, thereby allowing a claim to be relitigated against the United States. In doing so the Court reaffirmed its earlier holding in *Cherokee Nation v. United States*, 270 U.S. 476 (1926), allowing such a waiver by Congress as part of Congress' plenary power to pay the debts of the United States. U.S. CONST. Art. I, § 8.



General's scope of employment determinations for purposes of the Federal Tort Claims Act were subject to review. The employee who had been sued was involved in the alleged tort outside of the United States. Because there is no waiver of sovereign immunity for torts of United States' employees occurring outside of the United States, the Attorney General's certification that the employee was acting within the scope, which had the effect of dismissing the employee from the action and substituting the United States as the defendant, lead to dismissal of the action. This Court noted that Congress had provided a judicial procedure for determining whether the United States or its employees were liable in tort, and, unless the courts were able to actually review the determinations "[t]he key question presented – scope of employment – however contestable in fact, would receive no judicial audience. The Court could do no more, and no less, than convert the executive's scarcely disinterested decision into a court judgment." *Id.* The Court noted that this would be akin to "instructing a court automatically to enter a judgment pursuant to a decision the court has no authority to evaluate. *Cf. United States v. Klein . . .* " *Id.* Accordingly, the Court stated that it would "resist ascribing to Congress an intention to place courts in this untenable position." *Id.*

At the very least, then, *Klein* is violated where a court is instructed by Congress to enter a decision in the government's favor that the court has no ability to modify, or change. Of course, "its prohibition does not take hold when Congress 'amend[s] applicable law.' " *Plaut*, 514

U.S. at 218. (Internal citation omitted). But, § 3626(e)(2) is not an amendment of applicable law. It is merely an act of Congress instructing courts to retroactively revise a prior judgment and to enter a decision, albeit a provisional one, in the government's favor that the court has no power to stop or control. Section 3626(e)(2) provides no law for a trial court to apply, other than the ministerial duty of entering the stay when the thirty (30) or ninety (90) day period passes. Nor, as the State argues, is § 3626(e)(2) a mere regulation of procedure with the trial court retaining discretion as to the substantive result. It directs a particular decision. As the Seventh Circuit noted, for the period of time until a final decision is made on a motion to terminate prospective relief, § 3626(e)(2) "does mandate a particular rule of decision: the prospective relief must be terminated. In our view, this falls comfortably within the rule of *Klein*, and as such, it exceeds the power of the legislative branch." (State's App. at 30).

### C. Section 3626(e)(2) violates the separation of powers because, in addition to the specific rules of *Plaut* and *Klein*, it interferes with a core judicial function

The essence of separation of powers analysis in the context of Article III is whether an action of the coordinate branch has prevented the Judiciary "from accomplishing its constitutionally assigned functions." *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977). "It is emphatically the province and duty of the judicial department to say what the law is" in the cases pending before it. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177



(1803). Section 3626(e)(2) strips from courts the ability to perform this essential function. The judiciary is rendered powerless because, regardless of facts and circumstances, it loses its ability to act after thirty (30) or ninety (90) days. Congress, not the courts, make the decision. This is the epitome of interference with a constitutionally assigned function because it absolutely precludes any judicial function in an ongoing case.

At the core of Article III's establishment of a judicial department is the notion that the judiciary has "the power, not merely to rule on cases, but to decide them, subject to review only by superior courts in the Article III hierarchy . . . " *Plaut*, 514 U.S. at 218-19. *Hayburn's Case*, *Plaut*, and *Klein* all uphold the core notion that courts must be allowed to rule on and decide cases properly before them. Congress has the ability and duty to establish the jurisdiction of federal courts, U.S. CONST. Art. I, § 8, Art. III, § 1, and that power enables Congress to regulate practice and procedure in the federal courts as well. *See, e.g., Hanna v. Plumer*, 380 U.S. 460, 473 (1965); *Sibbach v. Wilson & Co.*, 312 U.S. 1, 9 (1941). However, once a court has jurisdiction of an issue, it must be allowed to function as a court and apply law to fact.

"Judicial jurisdiction implies the power to hear and determine a cause . . . " *United States v. O'Grady*, 89 U.S. (22 Wall.) 647 (1874). If in a particular case this power is removed or severely limited, it would "prevent[ ] the Judicial Branch 'from accomplishing its constitutionally assigned function.' " *Mistretta*, 488 U.S. at 396 (*quoting Nixon v. Administrator of General Services*, 433 U.S. at 443). As *Plaut* demonstrates, nowhere is this more clear than when Congress purports to interfere with a case that has

already become final. But, as *Klein* demonstrates, interference with a final judgment is not the only vice prohibited by separation of powers. Separation of powers is also violated when Congress grants a court jurisdiction over a case but then prevents the court from engaging in judicial decisionmaking – i.e, the application of law to fact – by compelling a decision in favor of the government. Section 3626(e)(2) fails ultimately because it prevents a court from engaging in its core function of judicial decisionmaking and because it compels a court to stand idly by while a final judgment is retroactively changed. Congress has not enacted a procedural rule which restricts a court's jurisdiction. Nor has it enacted a substantive change in the law which is to be applied prospectively. Instead, it has bypassed judicial decisionmaking completely and mandated that a final order be retroactively suspended solely because of the passage of a brief period of time. While allowing the court to hear the termination action, Congress has deprived the courts of ability to act to preserve the existing judgments during the pendency of the action, regardless of the circumstances.

This serves to distinguish 18 U.S.C. § 3626 from the other statutes and rules cited by the dissent in the Seventh Circuit and the State in its brief. As indicated above, the automatic bankruptcy stay still remains subject to judicial modification and involves judgments which have been issued with the implicit qualification that they could be stayed upon a bankruptcy filing. 11 U.S.C. § 362 (1994). The temporal limitations on temporary restraining orders in both Rule 65(b) of the Federal Rules of Civil Procedure and the Norris-LaGuardia Act, 29 U.S.C. § 107



(1994), in no way suspend or otherwise affect final judgments. In both cases the trial court retains jurisdiction to issue further orders as necessary. Time limitations on post-verdict motions, *see e.g., Carlisle v. United States*, 517 U.S. 416 (1996), similarly do not affect the validity of final judgments, nor do they suspend existing injunctive relief. A final judgment is not affected by speedy trial time limits, and courts retain their judicial capacities to determine if there are grounds to toll the limits and also retain discretion to determine if any dismissal is with or without prejudice. 18 U.S.C. §§ 3161(h), 3162 (1994). Although 28 U.S.C. § 1826 (1994) provides that an appeal from a contempt finding against a witness must be disposed of within 30 days, "several decisions have recognized that a serious constitutional question would be created if a court did not decide an appeal within 30 days and the period were treated as jurisdictional." *In re Grand Jury Proceedings*, 605 F.2d 750, 752, n. 1 (5th Cir. 1979). Consequently the deadline, which does not affect a final judgment, is not viewed as mandatory. *Id.; see also, e.g., In re Grand Jury Proceedings*, 946 F.2d 746, 749, n. 3 (11th Cir. 1991). The Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244(b)(3)(D) (Supp. III 1997), also purports to require the court of appeals to enter a decision within 30 days, in this case concerning the appropriateness of a successive application of habeas corpus. But this deadline has also been deemed to be precatory and not jurisdictional. *See, e.g, In re Siggers*, 132 F.3d 333 (7th Cir. 1997).

In none of these other examples has Congress conferred jurisdiction on a court and directed that, if it did not rule in a brief period, its earlier final decision would be overruled or disturbed in any way. In none of these

other examples has Congress directed that a court issue a particular order in the government's favor merely because of the passage of time. "It is one thing for Congress to prescribe judicial procedures to be followed in federal court: conferring jurisdiction and then directing that judicial deliberation be exercised in an unduly restrictive manner is quite a different matter." *Hadix*, 144 F.3d at 944, n. 15.[6]

---

[6] Although the amount of time that Congress has given to a trial court under (e)(2) to render a decision before it loses its ability to function is not relevant to its unconstitutionality since Congress may not so intrude on a court's essential prerogative, it is nevertheless worth noting, as the Sixth Circuit found in *Hadix*, that "[i]n many cases, including those now before us on appeal, the district courts' statutory task of ascertaining the presence of a current or ongoing violation of federal right requires delving into complex factual or legal intricacies and a court record spanning many years. Consequently, thirty or ninety days before onset of the automatic stay may prove an inadequate period of time in which to find a constitutional violation . . . " 144 F.3d at 944. And, the Seventh Circuit noted below that "[i]t may be, however, that in some cases the courts will not be able to carry out their adjudicative function in a responsible way within the time limits imposed by (e)(2)." (State App. at 31). This is especially true if the trial court believes that an evidentiary hearing is necessary to determine if there are on-going violations which would justify a continuation of the orders under § 3626(b)(3). *See, e.g., Cagle v. Hutto*, 177 F.3d 253, 258 (4th Cir. 1999), *petition for cert. filed* ("Even though a district court is not required to hold an evidentiary hearing in all cases, it nevertheless may do so in appropriate circumstances.") Once an evidentiary hearing is set both sides are likely to engage in discovery and perhaps retain experts to tour the institutions involved. Given this, it is unrealistic to expect that everything can be completed within 90 days.



The separation of powers analysis is a functional one that looks to whether the central prerogatives of one branch are being intruded upon by another. *Loving*, 517 U.S. at 757.[7] If § 3626(e)(2) is read to prevent a court from fulfilling its judicial function of applying law to facts, so

---

The State argues that prisoners and their counsel should be aware of ongoing constitutional violations so that the 90-day period is not unrealistic. (Brief of State at 10). But, when there is an existing decree the focus of counsel's attention will not be in finding constitutional violations, but on monitoring compliance with the decree. The PLRA requirement that the prisoners once again establish constitutional violations imposes a new duty on the lawyers and prisoners not dissimilar from that which existed when the case was originally filed. They will have to muster the evidence and witnesses to demonstrate the violations, to conduct the hearing, and to allow time for reasoned decisionmaking, all within 90 days.

[7] *See also*, Dean Alfange, Jr., *The Supreme Court and the Separation of Powers: A Welcome Return to Normalcy?*, 58 GEO. WASH. L. REV. 668, 712 (1990)

> The measure of the constitutionality of a government action challenged as violating the principle of separation of powers, therefore, should not be whether it brings about a separation or blending of powers but whether it threatens in any way the underlying purposes of the separation principle. That is, does it create a risk that there will be such a degree of accumulation of powers in a single branch that no effective check on the abuse of those powers can be anticipated, thus threatening liberty; or does it so hamstring the ability of any of the branches independently to exercise its powers or to perform its functions that it is prevented from effectively carrying out its constitutional responsibilities, thus threatening government efficiency? In short, separation of powers questions should be resolved by a functional, rather than a formal, mode of analysis.

that its prior final orders are automatically suspended by legislative fiat after the passage of time, the statute unconstitutionally interferes with a core judicial function.

## II. ALTHOUGH INTERPRETING § 3626(e)(2) AS PRESERVING THE RIGHT OF THE TRIAL COURT TO USE EQUITY TO ENJOIN THE AUTOMATIC STAY WOULD AVOID THE NECESSITY OF DECLARING THE STATUTE UNCONSTITUTIONAL, THE DOCTRINE OF CONSTITUTIONAL DOUBT DOES NOT EASILY APPLY HERE AND THE SEVENTH CIRCUIT'S DECISION IS CORRECT

In its brief, the United States asserts that if § 3626(e)(2) is interpreted absolutely to preclude a trial court from using its equitable powers to enjoin the operation of the automatic stay, that a substantial constitutional question would be posed. The prisoners certainly agree with this assertion since, as indicated above, interpreting the statute in this manner would render it unconstitutional. Because of this, the United States urges this Court to construe the statute as preserving the right of a trial court to issue a preliminary injunction against the automatic stay if the prisoners come forward and meet the traditional equitable standards for granting a preliminary injunction. However, this construction can be considered only if the text of § 3626(e)(2) is deemed to be ambiguous on this issue of whether the trial court has been allowed to retain any equitable power to enjoin the stay. "[T]he doctrine of constitutional doubt which requires that we interpret statutes to avoid 'grave and doubtful constitutional questions' . . . enters in only 'where a statute is susceptible of two constructions'. . . . " *Pennsylvania*



*Department of Corrections v. Yeskey*, 524 U.S. at 212 (1998) (internal citations omitted); *see also, e.g., Almendarez-Torres v. United States*, 523 U.S. 224, 237-38 (1998). The doctrine of constitutional doubt "does not give a court the prerogative to ignore the legislative will in order to avoid constitutional adjudication." *Commodity Futures Trading Commission v. Schor*, 478 U.S. at 841. Relying on that principle, the State argues that the meaning and intent of § 3626(e)(2) clearly and unambiguously establishes that the trial court is not permitted to stay the stay. The State therefore argues that the doctrine of constitutional doubt cannot be applied.

The prisoners believe that, if possible within the constraints of statutory interpretation, the United States' interpretation would be preferable to a literal reading of the statute, since it allows the trial court to stop the automatic stay from going into effect in situations where prisoners would be immediately harmed by the suspension. This is an interpretation which has been accepted by the courts of appeals in both *Ruiz* and *Hadix*. However, the prisoners also believe that the statute cannot easily be stretched to accommodate the statutory construction that the United States has put forth. Like the Seventh Circuit, therefore, the prisoners in this case agree that the more appropriate and straightforward response to the statute's fatal constitutional flaws is to declare § 3626(e)(2) unconstitutional.

As the United States correctly points out in support of its statutory construction claim, "[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." *Califano v. Yamasaki*,

442 U.S. 682, 705 (1979). However, this principle merely focuses the inquiry on whether Congress has given such a clear command in this case.

The first place to look is the language of the statute itself. It is the best evidence of statutory purpose and if it is unambiguous the inquiry into statutory meaning must end there. *See, e.g., West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83, 98 (1991). Here, the statute indicates that the motion to terminate "shall operate as a stay." 18 U.S.C. § 3626(e)(2). Moreover, in 18 U.S.C. § 3262(e)(3), Congress has clearly indicated the only circumstance under which the stay can be extended and has further indicated that it can only be extended for a 60-day period.[8]

---

[8] The United States cites cases where this Court found that district courts retained equitable discretion even though the statutes were silent on the question of whether the court had this power. However, none of these cases deal with a situation where the explicit language of the statute mandated a stay and did not contain any other language allowing the district court to do anything else. For example, in *Honig v. Doe*, 484 U.S. 305 (1988), the Court found that the automatic "stay put" portion of the Education of the Handicapped Act did not preclude an injunction on behalf of the school to enjoin the "stay put" provision. The Court based this conclusion on the fact that the relevant statute provided for judicial review of all determinations and thus the Court deemed the "stay put" provision to be a limitation on the school's ability to move the child, and not a court's. 484 U.S. at 327. The contrast here is clear since § 3626(e)(2) is a direct limitation on the court. In *Hecht v. Bowles*, 321 U.S. 321 (1944), the Court found that a statute providing that "a permanent or temporary injunction, restraining order, or other order shall be granted without bond" upon a showing that the Emergency Price Control Act had been violated nevertheless allowed a court to deny an injunction



The United States finds support for its statutory position in the language of § 3626(e)(4), which provides for an appeal of any order staying, suspending, delaying or barring the operation of the stay. The United States reads into this language an indication that Congress did not intend to remove trial courts' equitable discretion to enjoin the operation of the stay. The difficulty with this argument is that (e)(4) applies in only one direction: it permits immediate appeals from the grant of an injunction against the automatic stay but not from the denial of such a motion. This is contrary to the customary procedures under 28 U.S.C. § 1292(a)(1) (1994) and, at the very least, casts doubt on the United States' claim that Congress even contemplated such injunctions within the

---

even if a violation had been shown. *Id.* at 322. The Court found that a trial court maintained its full equity powers to deny injunctive relief since the Act explicitly gave the trial court discretion by providing that some "other order" could be issued in case of a violation. *Id.* at 328. In this case, Congress has not explicitly given the trial court any options other than to enter the stay, automatically, after 30 or 90 days. Finally, in *Scripps-Howard Radio v. Federal Communication Commission*, 316 U.S. 4 (1942), the Court found that a stay could be issued by the Court of Appeals under the Communications Act of 1934. The statute was silent as to whether the court had this power and the Supreme Court was unwilling to find, in this silence, a Congressional desire to remove the power to issue the stay. However, the Communications Act was not a statute which explicitly concerned modifying prior decisions and which had written into it an automatic stay provision. Here, on the other hand, the automatic stay already expresses Congress' desire to temporarily end the orders and to remove the ability of the trial court to interfere with such a result. Unlike the cases cited by the United States, § 3626(e) bears the clear imprint of a Congressional desire to remove the court's equitable power.

statutory framework of the PLRA. To be sure, as the United States argues, Congress could have provided for mandamus review of any injunction against the automatic stay if it believed that all such injunctions were *ultra vires*. But the fact that Congress eschewed the "extraordinary remedy" of mandamus, *Pittson Coal Corp. v. Sebben*, 488 U.S. 105, 121 (1988), in favor of the normal appellate process must be balanced against the fact that Congress provided no appellate review at all when a request for a stay of the stay is denied. In reviewing the significance of § 3626(e)(4), the Seventh Circuit concluded that "[t]he drafters of the PLRA realized that they were skating close to the line in (e)(2), and they wanted to ensure that the issue that is now before us could be resolved in an interlocutory appeal." (State App. at 23).

Certainly, the little legislative history that exists does not support the argument of the United States. As the State has demonstrated in its brief, there is absolutely no hint that Congress desired the automatic stay to be anything but that, an automatic stay. (State's Brief at 15-16).

If this were an appropriate case for application of the constitutional doubt doctrine the prisoners would welcome the interpretation of the United States since it allows trial courts to continue prospective relief in prison cases and it acknowledges the fact that irreparable harm may befall prisoners when injunctive relief is terminated, even temporarily. However, the doctrine cannot easily be applied here since Congressional intent to preclude the ability of trial courts to enjoin the stay appears to be clear. The Seventh Circuit properly struck down the statute as unconstitutional.



## CONCLUSION

This Court should therefore affirm the judgment of the court of appeals.

Respectfully submitted,

KENNETH J. FALK
*Counsel of Record*
JACQUELYN E. BOWIE
SEAN C. LEMIEUX
E. PAIGE FREITAG
CHRISTOPHER M. GIBSON
Indiana Civil Liberties Union
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059

HAMID R. KASHANI
445 N. Pennsylvania St.
Suite 600
Indianapolis, IN 46204
317/632-1000

STEVEN R. SHAPIRO
American Civil Liberties Union Foundation
125 Broad St.
New York, N.Y. 10004
212/549-2500

ELIZABETH ALEXANDER
National Prison Project of the American Civil Liberties Union Foundation
1875 Conecticut Avenue, N.W.
Washington, D.C. 20009
202/234-4830

*Attorneys for Respondents*

Apr 10, 2000

(13) (12)

Supreme Court, U.S.
FILED
APR 10 2000
CLERK

Nos. 99-224, 99-582

---

In the
Supreme Court of the United States

---

CHARLES B. MILLER, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, *et al.*,
*Petitioners,*

*v.*

RICHARD A. FRENCH, *et al.*,
*Respondents.*

---

On Writs of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

---

# REPLY BRIEF OF PETITIONERS CHARLES B. MILLER, *et al.*

---

KAREN M. FREEMAN-WILSON
*Attorney General of Indiana*
JON LARAMORE
*Counsel of Record*
*Deputy Attorney General*
219 State House
Indianapolis, IN 46204
317-233-6582

19 pp

## TABLE OF CONTENTS


I. The Department of Justice's construction of the statute is unsupported and unconvincing .....2

II. The automatic stay limits federal courts' power in a constitutional manner .....6

A. The automatic stay does not impermissibly alter a judgment .....6

B. Section 3626(e)(2) does not preclude the Judicial Branch from deciding cases .....9

C. Section 3626(e)(2) does not prescribe a rule of decision .....12

D. The automatic stay applies equally to consent decrees .....13

E. The automatic stay is not retroactive .....14

Conclusion .....15

## TABLE OF AUTHORITIES

*Cases*


*Benjamin v. Jacobson*, 172 F.3d 144 (2d Cir. 1999) (*en banc*), *cert. denied*, 120 S. Ct. 72 (1999) ..... 7
*Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999) ..... 8
*Board of Education v. Dowell*, 498 U.S. 237 (1991) ..... 14
*Cagle v. Hutto*, 177 F.3d 253 (4th Cir. 1999) ..... 13
*Dougan v. Singletary*, 129 F.3d 1424 (11th Cir. 1997), *cert. denied*, 118 S. Ct. 2375 (1998). ..... 8
*French v. Duckworth*, 178 F.3d 437 (7th Cir. 1999) ..... 4
*Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997), *cert. denied*, 118 S. Ct. 2374 (1998) ..... 8
*Hadix v. Johnson*, 133 F.3d 940 (6th Cir.), *cert. denied*, 118 S. Ct. 2368 (1998) ..... 8
*Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792) ..... 7
*Hecht Co. v. Bowles*, 321 U.S. 321 (1944) ..... 5
*Honig v. Doe*, 484 U.S. 305 (1988) ..... 5
*Imprisoned Citizens Union v. Ridge*, 169 F.3d 178 (3d Cir. 1999) ..... 8
*In re Scott*, 163 F.3d 282 (5th Cir. 1998) ..... 9
*Inmates of Suffolk Co. Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997) ..... 7
*Kerr v. U.S. District Ct.*, 426 U.S. 394 (1976) ..... 9
*Landgraf v. USI Film Products*, 511 U.S. 244 (1994) ..... 14
*Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. 518 (1855) ..... 8
*Phillips v. Joint Legislative Committee*, 637 F.2d 1014 (5th Cir. 1981), *cert. denied*, 456 U.S. 960 (1982) ..... 11





*Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) ..... 6, 7
*Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996), *cert. denied*, 520 U.S. 1277 (1997) ..... 8
*Robertson v. Seattle Audubon Society*, 503 U.S. 429 (1992) ..... 8
*Scripps-Howard Radio, Inc. v. Federal Communications Comm'n*, 316 U.S. 4 (1942) ... 4, 5
*United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871) ..... 12
*Watson v. Ray*, 192 F.3d 1153 (8th Cir. 1999) ..... 13
*Yakus v. United States*, 321 U.S. 414 (1944) ..... 7


*Constitutional Provisions*


Art. I, §8 ..... 8
Art. III, §2 ..... 8, 13


*Statutes*


18 U.S.C. §3142(d) ..... 9
18 U.S.C. §3162(a) ..... 9
18 U.S.C. §3626(a) ..... 4, 10
18 U.S.C. §3626(b) ..... 1, 8
18 U.S.C. §3626(b)(1) ..... 11
18 U.S.C. §3626(b)(3) ..... 4, 7, 10
18 U.S.C. §3626(e)(2) ..... passim
18 U.S.C. §3626(e)(3) ..... 4
18 U.S.C. §3626(e)(4) ..... 4
56 Stat. 33 ..... 5


*Rules*


Fed. R. Civ. P. 23 ..... 11
Fed. R. Civ. P. 37 ..... 11
Fed. R. Civ. P. 65 ..... 8

Nos. 99-224, 99-582

---

In the
Supreme Court of the United States

---

CHARLES B. MILLER, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, *et al.*,
*Petitioners,*

*v.*

RICHARD A. FRENCH, *et al.*,
*Respondents.*

---

On Writs of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

---

**REPLY BRIEF OF PETITIONERS CHARLES B. MILLER, *et al.***

---

In the Prison Litigation Reform Act, Congress struck a balance between prisoners' rights to obtain federal equitable redress for constitutional violations and states' rights to operate their prisons free of judicial intervention. The PLRA narrowed district courts' equitable discretion to prolong existing prison injunctions and consent decrees. 18 U.S.C. §3626(b). The automatic stay at issue in this case, 18 U.S.C. §3626(e)(2), gives teeth to the congressional goal of prompt judicial action on motions to vacate prison injunctions once constitutional violations have been eradicated.

Part I below explains that Congress carefully crafted the automatic stay to attain this goal by providing a clear cut-off date after which judicial inaction would lead to unequivocal consequences. Part II demonstrates that Congress carefully crafted the automatic stay to meet constitutional requirements: the automatic stay only prospectively affects the federal courts' enforcement power. It does not disturb the underlying judgment or undermine the judicial power to rule on the merits of the motion to vacate.

## I. The Department of Justice's construction of the statute is unsupported and unconvincing.

The Department of Justice's construction of §3626(e)(2) contradicts the clear congressional purpose, which was to provide an incentive for federal courts to act promptly on motions to vacate prison injunctions. The Department's construction – that the automatic stay is perpetually subject to the equitable power to enjoin its application – lacks support in the statutory text or case law. Moreover, neither the prisoner-plaintiffs nor any *amicus* agrees with the United States' construction of the statute.

Congress enacted the PLRA out of concern about delays in processing prisons' motions to vacate and modify judgments, and Congress created the automatic stay to give district courts incentives to act quickly to process those motions. Congress enacted the automatic stay not only out of concern that some federal courts remained involved in prison operations too long, but also because it viewed then-existing procedural tools as insufficient to promptly end federal judicial involvement.

Thus, only if the automatic stay is truly automatic – not perpetually extendable as the Department would have it – can Congress's goal be met and the balance Congress struck



in the PLRA be preserved. *See Br. for United States* at 24 (discussing "delicate balance" struck by Congress in the PLRA). The practical result of the Department's approach would be to eliminate the certainty Congress intended and replace it with discretionary decisions on preliminary injunctions subject only to abuse-of-discretion appellate review.

The Department's assertion that there is a "clear statement"-type rule for displacement of federal equitable jurisdiction is unsupported. The Department argues that Congress must speak with special clarity and force when it ousts ordinary equitable powers of the federal courts. *Br. for United States* at 14. But its assertion is incorrect. No case prescribes any specific standard or form of words for Congress to indicate its intention to preclude federal courts from using their ordinary equitable powers.

In any event, the automatic stay provision of the PLRA *is* a clear congressional indication of intent to displace traditional federal equitable authority. Its language, contents, and arrangement show clear congressional intent to preclude equitable authority to enjoin the automatic stay after the statutory 90-day period has passed. *See Br. of Petitioners Miller, et al.* at 14-16. Also, as explained in detail in the *Brief Amici Curiae of Association of State Correctional Administrators, et al.*, at 3-13, the legislative history also unequivocally supports the automatic nature of the stay in §3626(e)(2).

The statute, which is titled "automatic stay," uses mandatory language to indicate that a state's filing of a motion to vacate "shall operate as a stay" as of the thirtieth day after the motion is filed. 18 U.S.C. §3626(e)(2). "Even though we do not lightly assume that Congress meant to restrict the equitable powers of the federal courts, we find it impossible to read this language as doing anything less than

that." *French v. Duckworth*, 178 F.3d 437, 443 (7th Cir. 1999). The explicit statutory provision that the time period may be extended only once, for a period up to 60 additional days, further indicates that Congress did not intend the perpetual extensions espoused by the Department. 18 U.S.C. §3626(e)(3).

Moreover, the statute as a whole indicates congressional rejection of the Department's position. In §3626(b)(3), the statute indicates the *only* manner in which the automatic stay does not come into effect. The district court is authorized to continue its injunction *only* "if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right . . ." The United States' position that preliminary injunctive relief is readily available in relation to the automatic stay is belied by §3626(a), which significantly restricts the availability of preliminary injunctive relief in cases involving prisons.

Another structural element, the immediate appeal provision in §3626(e)(4), supports the automatic nature of the stay. The drafters inserted this provision in 1997, after some courts had failed to enforce the automatic stay, to ensure that any effort to impede the automatic implementation of the stay could promptly be presented to an appellate court. As Judge Diane P. Wood wrote for the Seventh Circuit panel, "The drafters of the PLRA realized that they were skating close to the line in (e)(2), and they wanted to ensure that the issue that is now before us could be resolved in an interlocutory appeal." *French*, 178 F.3d at 443.

The cases cited by the Department of Justice will not bear the weight they have been assigned, as the prisoners also admit. *Br. for French* at 32 n.8. *Scripps-Howard Radio, Inc. v. Federal Communications Comm'n*, 316 U.S. 4 (1942), construed a statute that gives the federal courts certain review



powers over FCC decisions, although not explicitly the equitable power to stay an administrative order. *Id.* at 8-9. The Supreme Court ruled that the failure to explicitly include the power to stay in the relevant statute did not preclude the federal courts from staying FCC decisions. *Id.* at 10. *Scripps-Howard* thus construed the omission of an explicit grant of equitable power, not the kind of explicit limitation on federal equitable power in the PLRA.

*Hecht Co. v. Bowles*, 321 U.S. 321 (1944), dealt only with construction of statutory language conferring equitable power. The question was whether a particular statute required an injunction under certain circumstances, and the Court ruled that it did not because the specific statutory language did not mandate issuance of an injunction. *Id.* at 322, 328-29.[1] It is not at all a case about the general nature of federal equitable power.

Likewise, *Honig v. Doe*, 484 U.S. 305 (1988), dealt with whether a federal court can exercise its general equitable authority in a statutory scheme that displaces *parties'* ordinary discretion. *Id.* at 323-27. Because *parties'* discretion, not federal courts' general equitable authority, was the subject of the legislation, *Honig* provides little guidance in this case where Congress explicitly undertook to cabin the ordinary equitable power of federal district courts.

The Department has changed its position on the constitutionality of §3626(e)(2), now contending that it is constitutional even if construed as the prisoners, the State,

[1] The statutory language construed in *Hecht* illustrates the point. The statute mandated that if certain facts were proved, "a permanent or temporary injunction, restraining order, or other order shall be granted . . ." 56 Stat. 33 (quoted in *Br. for United States* at 14-15). The Court ruled only that the statutory language itself did not mandate an injunction because an "other order" was allowable under the statute. 321 U.S. at 328.

and the Seventh Circuit construed it. *Br. for United States* at 37. In the Seventh Circuit, the Department argued that the automatic stay was unconstitutional if so construed. *Seventh Circuit Br. for the United States* at 37-40. The Department's change undercuts application of the doctrine of constitutional doubt.

The language, structure, and purpose of the automatic stay all indicate that it is what it is labeled – automatic. These factors sufficiently show congressional intent to alter federal courts' ordinary equitable powers.

## II. The automatic stay limits federal courts' powers in a constitutional manner.

The automatic stay is a proper limitation on federal courts' power and does not violate the Constitution. The automatic stay may temporarily deprive prisoners of the benefit of an injunction – but only during the time period when prisoners are unable to prove that they are harmed by a current federal law violation requiring federal injunctive correction.

The automatic stay leaves the judgment intact until the district court itself alters the judgment. The automatic stay also preserves the authority of the Judicial Branch to rule on the merits of the motion and prescribe appropriate relief if a violation is found.

### *A. The automatic stay does not impermissibly alter a judgment.*

The prisoners' reliance on *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), is faulty because the automatic stay has no effect whatsoever on the underlying district court judgment itself. The automatic stay affects only the district court's prospective enforcement authority, which Congress



has the power to change. *E.g., Yakus v. United States*, 321 U.S. 414, 433-40 (1944) (act precluding interlocutory injunction against rules promulgated under Emergency Price Control Act is constitutional).

*Plaut* stands for the proposition that Congress cannot reopen judgments that are already final. Litigants who win judgments such as those in *Plaut* have vested rights that cannot be disturbed by legislation that retrospectively divests them of their rights. *Plaut*, 514 U.S. at 218-19, 225.

But the automatic stay does not act on the judgment itself, only on the district court's prospective equitable authority. This difference is much more than semantic. It shows that Congress set up a system that respected the fundamental difference in the function of the branches.

Congress did not undertake to review the merits of any district court injunction. *Cf. Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792) (Constitution prohibits legislative review of court judgments). That power remains solely with the district court. Rather, Congress changed the federal district courts' authority to enforce prospective injunctive relief. Under §3626(e)(2), the injunctive relief remains in place, but it cannot be enforced by the parties absent the showing of ongoing federal law violations required by §3626(b)(3).

The courts of appeals have recognized that Congress acted within its authority by drafting the PLRA to change the substantive law governing prospective relief available to prisoners. All eight courts of appeals that have passed on the issue have decided that Congress had the power to establish new criteria for injunctive relief in the prison context and to apply those criteria prospectively to injunctions granted in the past. *Inmates of Suffolk Co. Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997); *Benjamin v. Jacobson*, 172 F.3d 144 (2d Cir. 1999) (*en banc*), *cert. denied*, 120 S. Ct. 72 (1999);

*Imprisoned Citizens Union v. Ridge*, 169 F.3d 178 (3d Cir. 1999); *Plyler v. Moore,* 100 F.3d 365 (4th Cir. 1996), *cert. denied*, 520 U.S. 1277 (1997); *Hadix v. Johnson*, 133 F.3d 940 (6th Cir.), *cert. denied*, 118 S. Ct. 2368 (1998); *Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999); *Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997), *cert. denied*, 118 S. Ct. 2374 (1998); *Dougan v. Singletary*, 129 F.3d 1424 (11th Cir. 1997), *cert. denied*, 118 S. Ct. 2375 (1998).

The substantive law that changed in the PLRA was not the law governing the subject matter of the dispute (here, the Eighth Amendment, which Congress cannot change), but rather the law governing federal court power. *See Robertson v. Seattle Audubon Society*, 503 U.S. 429, 437-39 (1992) (change in underlying law justifies reopening prospective component of judgment). The prisoners argue, in a footnote, that all of the circuits misapplied *Robertson* when they found that §3626(b) changed the underlying law and that §3626(b) also is unconstitutional. *Br. for French* at 17 n.3. Although this issue is not before the Court, the prisoners are wrong because the circuits properly concluded that §3626(b) is the type of statutory change that may alter prospective relief under *Robertson* and *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. 518 (1855).

The prisoners also incorrectly attack the analogy between the automatic stay in the PLRA and the automatic stay in bankruptcy. *Br. for French* at 19-20. It is of no moment that the bankruptcy stay has its roots in the Article I, §8 bankruptcy power. The automatic stay's roots are in a constitutional provision of similar significance, namely the Article III, §2 power of Congress to control federal court jurisdiction.[2]

[2] Temporary restraining orders under Fed. R. Civ. P. 65 are similar to the automatic stay in that that may be extended, as preliminary injunctions, but only on a specified showing. Similarly, prison injunctions may be extended under the PLRA, but only after the showing specified in §3626(b)(3). Other statutes attach mandatory consequences to courts' failure to act within a specified time period. *E.g.*, 18 U.S.C. §3142(d) (pretrial detainee is released if court fails to make findings in 10 days); 3162(a) (indictment is dismissed if prisoner not brought to trial within statutory time period). *See Br. for French* at 26-27 (discussing these provisions).



The prisoners also err in labeling mandamus an effective remedy in this case. *Br. for French* at 19. Mandamus cannot be a complete remedy for the ills Congress sought to address in the PLRA because it is always discretionary. *Kerr v. U.S. District Ct.*, 426 U.S. 394, 403 (1976); *see also In re Scott*, 163 F.3d 282, 284 (5th Cir. 1998) (declining to grant mandamus when district court failed to rule on motion to vacate prison injunction pending for more than two years). Moreover, the process of seeking mandamus, including briefing, argument, and obtaining the decision, itself consumes the time Congress deemed precious when it enacted the automatic stay.

The prisoners cannot show that the PLRA's automatic stay impermissibly alters a judgment. Rather, the statute permissibly restricts federal courts' prospective equitable power.

### *B. Section 3626(e)(2) does not preclude the Judicial Branch from deciding cases.*

The automatic stay preserves the Judicial Branch's core function to rule on cases and to prescribe relief when a violation of law is found. The prisoners misdescribe the statute when they say that the judiciary "is rendered powerless because, regardless of the facts and circumstances, it loses its ability to act after thirty (30) or ninety (90) days." *Br. for French* at 25. Contrary to their contentions, the statute neither "prevents a court from engaging in its core function of judicial decisionmaking," nor "deprive[s] the courts of the

ability to act to preserve the existing judgments during the pendency of the action, regardless of the circumstances." *Br. for French* at 26.

The prisoners' hyperbolic description overlooks the fact – plain on the face of the statute – that the prisoners are entitled to federal injunctive relief at any time they prove an ongoing violation of federal law. 18 U.S.C. §3626(b)(3). The prisoners' brief often completely ignores this provision, which is an essential part of the balance Congress struck between the prisoners' right to federal court protection and the states' right to be free of judicial interference in the absence of a federal violation.

The PLRA protects the core function of the judiciary not only because the judgment remains inviolate until the district court acts on the motion to vacate, but also because the district court retains the power – at any time – to impose whatever injunctive relief is appropriate under the substantive standards of the PLRA when prisoners show an ongoing violation of federal law. 18 U.S.C. §3626(a), (b)(3). The 90-day "window," which gives prisoners time to come forward with evidence that federal equitable intervention continues to be necessary to preserve prisoners' rights, is an integral part of the careful congressional crafting of the automatic stay.

Injunctions are already in place in all of the cases where the automatic stay could be applied. In those cases, it is reasonable for Congress to assume that any serious violation of the prisoners' rights would already be the subject of an enforcement action, motion for contempt, or motion to modify the injunction by the prisoners. Congress would be completely justified in believing that serious violations of



prisoners' rights would be identified for the supervising court long before the prison moved to vacate equitable relief.[3]

The prisoners reply that "where there is an existing decree the focus of counsel's attention will not be in finding constitutional violations, but on monitoring compliance with the decree." *Br. for French* at 29 n.6. To the extent that "monitoring compliance" is different than looking for constitutional violations, this response overlooks counsel's responsibilities under relevant professional conduct rules and Fed. R. Civ. P. 23. Nor can an attorney's choice about how to spend her time make the statute unconstitutional.[4]

Moreover, serious violations of constitutional rights such as violence against prisoners, deliberately indifferent medical care, or widespread impediments to access to courts could readily be shown in 90 days. Such showings would justify continuation of the underlying injunction, or at least the portions of it pertaining to the proved violations. 18 U.S.C. §3626(b)(3).

---

[3] As explained in the *Br. of Petitioners Miller, et al.*, at 24, the PLRA is structured to give prison officials incentives to move to vacate or modify the injunction only when they believe the prison meets constitutional standards. If prison officials predict incorrectly, and their motion is denied, they cannot again move to vacate or modify the injunction for one year. 18 U.S.C. §3626(b)(1). For the same reasons (and to avoid sanctions including adverse factual inferences under Fed. R. Civ. P. 37), prison officials have incentives to cooperate with discovery after moving to vacate.

[4] The *Taylor* class frets that a prisoner class might be without counsel when a motion to vacate is filed. *Brief of Amicus Curiae Plaintiff Class* at 15. If prisoners indicate to the district court ongoing problems with administration of an injunction, the district court would appoint counsel for the class. *E.g., Phillips v. Joint Legislative Committee*, 637 F.2d 1014, 1023 n.14 (5th Cir. 1981) (regarding appointment of class counsel), *cert. denied*, 456 U.S. 960 (1982). The absence of counsel for the class equates with compliance with the injunction.

Less serious violations, such as subtle problems with prisoners' diet, recreation, or education, might take more than 90 days to prove. But their less serious character makes the automatic stay of the injunction less problematic (and, indeed, may assist the prisoners in proving violations if prison policies change once the injunction is stayed). Prisoners retain the damage remedy for harms incurred during the time the injunction is stayed.

This calibration of relief is part and parcel of congressional crafting of the automatic stay to balance prisoners' need for federal injunctive relief when there are violations against prisons' right to be free from judicial supervision when there are not. Its construction preserves the core judicial function, and it is constitutional.

### *C. Section 3626(e)(2) does not prescribe a rule of decision.*

The automatic stay does not prescribe any rule of decision whatsoever. Rather, Congress crafted the provision to fully preserve the district court's authority to rule on the merits of the motion to vacate and prescribe appropriate relief if it finds any federal violation.

The prisoners' discussion of this principle to §3626(e)(2) is extremely brief, only the last six sentences of a section that mostly recounts the holding in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871). *Br. for French* at 20-24. Their short discussion incorrectly describes the way §3626(e)(2) acts on prison injunctions. The automatic stay does not "instruct[ ] courts to retroactively revise a prior judgment and to enter a decision . . . in the government's favor . . ." *Br. for French* at 24.



Rather, in accordance with Article III, §2, the automatic stay places a substantive limitation on federal district courts' enforcement power. Once 30 (or 90) days pass, the district court is precluded from enforcing the existing injunction until the prisoners are able to prove the need for further judicial involvement to cure an ongoing deprivation of federal rights or the court rules on the pending motion to vacate.

### *D. The automatic stay applies equally to consent decrees.*

The injunction at issue in this case occurred after trial, not as the result of the parties' consent. The *amicus* brief of the *Taylor* class complains that the application of the automatic stay to consent decrees poses different constitutional problems than does application in this case. The *Taylor* class position is incorrect. *See, e.g., Watson v. Ray*, 192 F.3d 1153 (8th Cir. 1999) (applying PLRA to consent decree); *Cagle v. Hutto*, 177 F.3d 253 (4th Cir. 1999) (same).

Because the automatic stay does not act on the judgment, whether litigated or by consent, but rather acts directly on the federal courts' enforcement authority, the automatic stay violates no constitutional provision. Congress has authority to alter the federal courts' authority to enforce judgments prospectively, including consent decrees. The logical extension of the *Taylor* class's argument is that once a judgment is entered, Congress is powerless to alter the federal courts' authority regarding that judgment. The *Taylor* class supports that position with no authority, and there is none.

*E. The automatic stay is not retroactive.*

The central fallacy of the *amicus* brief of Public Citizen was discussed above in Part II.B. in connection with congressional authority to change federal courts' power to enforce injunctions prospectively. Public Citizen's position is that Congress cannot change federal judicial enforcement authority as to judgments granted in the past. *See Br. of Public Citizen* at 3, 21. The Court rejected that position in *Landgraf v. USI Film Products*, 511 U.S. 244, 273 (1994): "When the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive." *Landgraf* thus makes clear that Congress has the authority to change federal judicial power prospectively, and such changes can be applied to judgments rendered in the past. *Id.* at 274.

Public Citizen fails to recognize that the judgment in this case already had its intended effect by causing prison officials to change conditions at the Pendleton prison to conform with constitutional standards. Continued judicial oversight no longer is necessary unless the prisoners can show a federal violation justifying continued relief. Public Citizen's position that judicial supervision must continue perpetually, *Br. of Public Citizen* at 5, 16, is profoundly antidemocratic, insulating control of prisons from elected and appointed officials with ultimate accountability to the public. *See, e.g., Board of Education v. Dowell*, 498 U.S. 237, 248 (1991) (stressing interest in local control of local institutions).



**Conclusion**

The Court should reverse the Seventh Circuit's judgment.

Respectfully submitted,

KAREN M. FREEMAN-WILSON
Attorney General of Indiana

JON LARAMORE
Deputy Attorney General
*Counsel of Record*

219 State House
Indianapolis, IN 46204
317-233-6582

Apr 5, 2000

Supreme Court, U.S.
FILED
APR 5 2000
CLERK

Nos. 99-224 and 99-582

# In the Supreme Court of the United States

CHARLES B. MILLER, ET AL., PETITIONERS

*v.*

RICHARD A. FRENCH, ET AL.

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD A. FRENCH, ET AL.

*ON WRITS OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE SEVENTH CIRCUIT*

## REPLY BRIEF FOR THE UNITED STATES

SETH P. WAXMAN
*Solicitor General*
*Counsel of Record*
*Department of Justice*
*Washington, D.C. 20530-0001*
*(202) 514-2217*

23 pp

## TABLE OF CONTENTS


| | | Page |
|---|---|---|
| A. | Statutory text | 3 |
| B. | Related provisions | 8 |
| C. | Legislative purpose | 11 |
| D. | Avoidance of constitutional question | 12 |
| E. | Constitutionality of the State's and respondents' construction | 15 |


## TABLE OF AUTHORITIES

Cases:


| | |
|---|---|
| *American Steel Foundries* v. *Tri-City Trades Council*, 257 U.S. 184 (1921) | 15 |
| *Califano* v. *Yamasaki*, 442 U.S. 682 (1979) | 2 |
| *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922 (1975) | 7 |
| *Edward J. Debartolo Corp.* v. *Florida Gold Coast Bldg. & Const. Trades Council*, 485 U.S. 568 (1988) | 14 |
| *Hadix* v. *Johnson*, 144 F.3d 925 (6th Cir. 1998) | 2, 9, 17-18 |
| *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792) | 13 |
| *Hecht Co.* v. *Bowles*, 321 U.S. 321 (1944) | 3 |
| *Honig* v. *Doe*, 484 U.S. 305 (1988) | 6 |
| *Landgraf* v. *USI Film Prods.*, 511 U.S. 244 (1994) | 15 |
| *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1885) | 16 |
| *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) | 13, 16, 18 |
| *Porter* v. *Warner Holding Co.*, 328 U.S. 395 (1946) | 2 |
| *Robertson* v. *Seattle Audubon Soc'y*, 503 U.S. 429 (1992) | 17, 18 |
| *Ruiz* v. *Johnson*, 178 F.3d 385 (5th Cir. 1999) | 2, 9 |

Cases—Continued: Page

*Ruiz* v. *Scott*, No. 96-21118 (5th Cir. Aug. 6, 1997) ..... 10
*TVA* v. *Hill*, 437 U.S. 153 (1978) ..... 19
*United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871) ..... 17
*Weinberger* v. *Romero-Barcelo*, 456 U.S. 305 (1982) ..... 19
*Yakus* v. *United States*, 321 U.S. 414 (1944) ..... 7, 19

Constitution, statutes and rule:

U.S. Const.:
Art. III ..... 13, 15
Amend. VIII ..... 17
Prison Litigation Reform Act of 1995, 18 U.S.C. 3626 (Supp. IV 1998):
18 U.S.C. 3626(a)(2) (Supp. IV 1998) ..... 12
18 U.S.C. 3626(b) (Supp. IV 1998) ..... 1, 11
18 U.S.C. 3626(b)(3) (Supp. IV 1998) ..... 11
18 U.S.C. 3626(e) (Supp. IV 1998) ..... 3
18 U.S.C. 3626(e)(1) (Supp. IV 1998) ..... 9, 11, 15
18 U.S.C. 3626(e)(2) (Supp. IV 1998) ..... 3, 4
18 U.S.C. 3626(e)(3) (Supp. IV 1998) ..... 4, 8
18 U.S.C. 3626(e)(4) (Supp. IV 1998) ..... 9, 10, 11
5 U.S.C. 1508 ..... 6
5 U.S.C. 7123(c) ..... 5
7 U.S.C. 194(g) ..... 5
7 U.S.C. 228b-3(g) ..... 5
11 U.S.C. 362(d) ..... 4
15 U.S.C. 80a-42(b) ..... 5
28 U.S.C. 2349(b) ..... 5

Miscellaneous:

*The American Heritage Dictionary of the English Language* (3d ed. 1992) ..... 3
*Webster's Third New International Dictionary* (1976) ..... 3


# In the Supreme Court of the United States

No. 99-224

CHARLES B. MILLER, ET AL., PETITIONERS

*v.*

RICHARD A. FRENCH, ET AL.

No. 99-582

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD A. FRENCH, ET AL.

*ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

## REPLY BRIEF FOR THE UNITED STATES

The State and respondents both argue (State Br. 13-18; Resp. Br. 30-34) that a district court presented with a termination motion under the Prison Litigation Reform Act of 1995 (PLRA), 18 U.S.C. 3626(b) (Supp. IV 1998), does not have equitable authority to suspend the automatic stay and thereby preserve the status quo

until it rules on the termination motion. Under the State's and respondents' interpretation of the Act, even if the termination motion cannot be resolved within 90 days, and even if plaintiffs establish that a stay of the court's outstanding orders would cause them irreparable injury and that the termination motion is likely to be defeated, a court could not suspend the automatic stay.

That interpretation fails to give appropriate weight to the established background principle that courts retain their traditional authority to issue equitable relief, "[a]bsent the clearest command to the contrary from Congress." *Califano* v. *Yamasaki*, 442 U.S. 682, 705 (1979); see also *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398 (1946) ("Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied."). As the Fifth and Sixth Circuits have concluded, because federal courts have always enjoyed equitable authority to preserve the status quo pending resolution of cases before them, and because the automatic stay provision does not clearly and unequivocally remove that authority, courts presented with a termination motion have authority to suspend the automatic stay under traditional equitable standards. *Ruiz* v. *Johnson*, 178 F.3d 385, 394 (5th Cir. 1999); *Hadix* v. *Johnson*, 144 F.3d 925, 938 (6th Cir. 1998).

The State argues (Br. 17) that, "in light of the clear statutory language making the stay automatic, the legislative history, and the manifest purpose of § 3626(e)(2), no further congressional statement limiting district courts' general equitable authority is necessary." Respondents similarly argue (Br. 34) that Congress's intent to preclude equitable relief "appears



to be clear." The materials cited by the State and respondents, however, do not show that Congress intended to strip federal courts of their equitable authority to preserve the status quo pending resolution of cases before them, much less that Congress "unequivocally" intended such a "drastic departure from the traditions of equity practice." See *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944). Instead, the text, legislative history, and evident purpose of the automatic stay provision are all fully consistent with a court having residual authority to maintain the status quo by suspending the automatic stay under traditional equitable standards.

A. Statutory Text

1. The State contends (Br. 14) that Congress's characterization of the stay as "automatic," 18 U.S.C. 3626(e) (Supp. IV 1998), demonstrates that courts lack authority to preserve the status quo by suspending the statutory stay. "Automatic," however, means self-acting, not unstoppable. *The American Heritage Dictionary of the English Language* 125 (3d ed. 1992) (definition 1); *Webster's Third New International Dictionary* 148 (1976) (definition 3). The statutory stay satisfies that definition because it takes effect and continues to operate without any *affirmative* judicial action. See 18 U.S.C. 3626(e)(2) (Supp. IV 1998) ("Any motion * * * shall operate as a stay during the period beginning on the 30th day after such motion is filed * * * and ending on the date the courts enters a final order ruling on the motion."). That automatic feature of the stay, however, does not imply, much less necessarily and inescapably imply, that a court lacks authority to suspend it. Washing machines, car transmissions, and airplane steering mechanisms operate auto-

matically, but a person may intervene to suspend their operation. The same is true of the automatic stay.

If the State's understanding of the meaning of "automatic" were correct, it would be an oxymoron to say that a court has authority to suspend an automatic stay. As the State recognizes, however, the PLRA itself expressly authorizes a court to postpone the automatic stay for good cause for 60 days. 18 U.S.C. 3626(e)(3) (Supp. IV 1998). The Bankruptcy Act similarly authorizes a court to "terminat[e], annul[], modify[], or condition[]" the automatic stay effected by a bankruptcy petition. 11 U.S.C. 362(d). Those statutory provisions reinforce the conclusion that "automatic" simply does not mean "incapable of being suspended."

2. The State and respondents similarly err in relying (State Br. 14; Resp. Br. 32) on the term "shall" in the phrase "any motion * * * shall operate as a stay * * * beginning on the 30th day after such motion is filed." 18 U.S.C. 3626(e)(2) (Supp. IV 1998). That statutory language does not refer to a court's authority at all, much less demonstrate a clear and unequivocal intent to strip a court of its ordinary equitable authority. Instead, it serves an entirely different purpose. It is equivalent to saying that, "after 30 days, a termination motion is to be legally regarded as a stay, even though it is only a motion."

That natural reading of the statutory text refutes the argument that the automatic stay provision strips a court of authority to suspend the automatic stay. There is absolutely no inconsistency between a court and the parties being obliged to regard a termination motion as a "stay" and a court having authority to suspend the operation of such a "stay." To the contrary, since a court has authority to suspend an ordinary stay under traditional equitable standards, the logical implication



of requiring a termination motion to be regarded as a stay is that a court has authority to suspend that stay under traditional equitable standards as well.

That reading of the "shall operate as" language is consistent with Congress's use of the phrase in other statutes. For example, a provision concerning judicial review of a live poultry order of the Secretary of Agriculture states that "[i]f the court of appeals affirms or modifies the order of the Secretary, *its decree shall operate as an injunction* to restrain the live poultry dealer * * * from violating the provisions of such order or such order as modified." 7 U.S.C. 228b-3(g) (emphasis added). The underlined phrase makes clear that the court's decree is to be legally regarded as an injunction, even though it is only a decree. It does not suggest, however, that a court of appeals would lack authority to suspend the operation of that injunction under traditional equitable standards. Other provisions also illustrate that Congress uses "shall operate as" to require something that is not a stay or an injunction to be treated as such, not to strip a court of its traditional equitable authority.[1]

---

[1] 7 U.S.C. 194(g) ("If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the packer * * * from violating the provisions of such order or such order as modified."); 15 U.S.C. 80a-42(b) ("The commencement of proceedings under subsection (a) of this section to review an order of the Commission * * * shall operate as a stay of the Commission's order unless the court otherwise orders."). Congress also uses the phrases "shall not operate as" and "does not operate as" to make clear that something that is not a stay should not be treated as one. See 5 U.S.C. 7123(c) ("The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay."); 28 U.S.C. 2349(b) ("The filing of the petition to review does not itself stay or suspend the operation of

This Court's decision in *Honig* v. *Doe*, 484 U.S. 305 (1988), also demonstrates that the use of the term "shall" in the automatic stay provision is not incompatible with a court having authority to suspend the automatic stay. The "stay-put" provision at issue in *Honig* specified that, during the pendency of any action challenging a school district's educational placement decision, and absent agreement between the parties, "the child shall remain in the then current educational placement of such child." *Id.* at 312. That provision, the Court held, "in no way purports to limit or pre-empt the authority conferred on courts [to issue equitable relief]." *Id.* at 327. Instead, it "effectively creates a presumption in favor of the child's current educational placement which school officials can overcome only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others." *Id.* at 328.

The automatic stay provision has a similar import. It effectively creates a presumption in favor of a stay of outstanding orders which plaintiffs ordinarily can overcome only by showing that such a stay is likely to cause irreparable injury and that the termination motion is likely to be defeated. To read anything more into the automatic stay provision ignores both the ordinary meaning of the statutory text and the settled principle

---

the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition."); 5 U.S.C. 1508 ("The institution of the proceedings does not operate as a stay of the determination or order unless * * * the court specifically orders a stay; and the officer or employee is suspended from his office or employment while the proceedings are pending.").



that courts retain their equitable authority unless Congress has clearly and unequivocally displaced it.

3. One of the State's supporting amici relies (Washington Legal Foundation Br. 8) on the automatic stay provision's specification of a beginning point and ending point as a basis for reading it to strip a court of its ordinary equitable authority. But that specification simply tracks the ordinary period for court-ordered interlocutory relief—from the moment it comes into existence until the court rules on the merits. Such a specification does not suggest that a court lacks authority to suspend the stay. For example, when a court issues an order stating that "the court hereby stays prior orders of this court pending a decision on the merits of the termination motion," it surely retains authority to suspend the stay based on traditional equitable standards. The same is true of the automatic stay.

4. Contrary to the State's contention (Br. 13), our interpretation does not read the automatic stay provision out of the statute. Absent that provision, defendants would have the burden of establishing irreparable injury and likelihood of success in order to obtain a stay of outstanding orders. *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). Even if defendants made such a showing, a court would still have discretion to decline to issue a stay based on the hardship to plaintiffs and the public interest. *Yakus* v. *United States*, 321 U.S. 414, 440 (1944).

The automatic stay provision relieves defendants of the burden of establishing the prerequisites for a stay, and eliminates a court's discretion to decline to issue a stay based on other factors. Under the automatic stay provision, the motion itself operates as a stay, and a court ordinarily may suspend the stay only if plaintiffs

can establish the traditional prerequisites for injunctive relief. Because it is often difficult to establish the essential prerequisites for injunctive relief at a preliminary stage in the proceedings, and because courts often do not award injunctive relief even when the essential prerequisites for such relief have been established, that change in the law is significant.

B. Related Provisions

1. The interpretation offered by the State and respondents is not assisted by the provision authorizing a court to postpone the automatic stay for good cause for no more than 60 days. 18 U.S.C. 3626(e)(3) (Supp. IV 1998). According to the State and respondents (State Br. 14; Resp. Br. 32), that provision indicates that no additional extension is permitted under the law for any reason. The State and respondents read far too much into the good cause provision.

Good cause is a generous standard that permits a postponement of the stay on the basis of a wide variety of factors affecting a court's ability to resolve the termination motion within 30 days, including a counsel's scheduling conflict, the need for discovery, and other similar factors. See U.S. Br. 21. Congress's allowance of no more than a 60-day postponement under that generous standard does not imply, and certainly does not necessarily and inescapably imply, that no further suspension of the stay is warranted when a plaintiff can satisfy the far more demanding standards for obtaining equitable relief. To the contrary, Congress's limitation of "good cause" postponements to 60 days, while failing to provide that a court lacks additional authority to suspend the stay under traditional equitable standards, confirms that the latter authority remains intact.



2. The State and respondents also fail to account adequately for the provision in the Act authorizing an appeal from a denial of an order suspending the automatic stay. 18 U.S.C. 3626(e)(4) (Supp. IV 1998). As the Fifth and Sixth Circuits have concluded, it is unlikely that Congress would have provided for ordinary interlocutory appellate review of district court orders suspending the stay if it intended to strip courts of any authority to issue such a stay. *Ruiz*, 178 F.3d at 394; *Hadix*, 144 F.3d at 938.

If, as the State believes (Br. 14-15), Congress intended to strip courts of any authority to suspend the automatic stay, but harbored a concern that district courts might nonetheless continue to issue such orders, Congress likely would have enacted a review provision that resembles Section 3626(e)(1). In that provision, Congress provided *first*, that "[t]he court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions," and *second*, that "[m]andamus shall lie to remedy any failure to issue a prompt ruling." 18 U.S.C. 3626(e)(1) (Supp. IV 1998). If Congress wanted to achieve the result suggested by the State, it could have drafted a parallel provision specifying *first* that "other than the authority to postpone the automatic stay for good cause under 18 U.S.C. 3626(e), a court shall have no authority to suspend the automatic stay," and *second*, that "mandamus (or an appeal) shall lie to correct any such order."

Congress's failure to adopt that approach and its adoption instead of a provision authorizing immediate appellate review of orders suspending the stay without specifying any standard of review is significant. It strongly suggests that Congress intended to leave a district court's traditional equitable authority intact,

subject to appellate review under the established abuse of discretion standard.

One of the State's supporting amici argues (National Governor's Association Br. 15) that the appellate review provision has the limited purpose of overriding the Fifth Circuit's decision in *Ruiz* v. *Scott*, No. 96-21118 (Aug. 6, 1997), and making clear that an order declaring the automatic stay provision unconstitutional is appealable; see also State Amicus Br. 12. *Ruiz*, however, held only that an order refusing to grant an immediate termination motion without a hearing is not appealable. Slip op. 15-18. It did not hold that an order declaring the automatic stay unconstitutional is unappealable. *Id.* at 18-20. Moreover, the text of the appeal provision does not reflect that its sole purpose is to authorize appeals from orders declaring the automatic stay unconstitutional. It broadly authorizes appeal of any order "staying, suspending, delaying, or barring the operation of the automatic stay," 18 U.S.C. 3626(e)(4) (Supp. IV 1998), and the one thing it does not expressly authorize is an appeal from an order that simply "declares the automatic stay unconstitutional."

Respondents contend (Br. 33-34) that Congress's failure to authorize plaintiffs to appeal from orders refusing to suspend the automatic stay casts doubt on the claim that Congress contemplated such injunctions. But the PLRA reflects Congress's concern that district courts had gone too far in granting relief to plaintiffs in prison litigation cases, not that they had failed to go far enough. It is therefore hardly surprising that Congress expressly authorized prison authorities to appeal from orders suspending the automatic stay, while leaving plaintiffs with whatever appellate rights existing law already provides.



C. Legislative Purpose

1. The State argues (Br. 15-17) that the purpose of the automatic stay provision is to provide an incentive for courts to rule promptly on a termination motion, and that, if a court has authority to suspend the automatic stay for more than 60 days, it would defeat that purpose. Under our interpretation, however, a court may suspend the automatic stay only in limited circumstances. As discussed above, under our interpretation, a court has authority to suspend the stay only if the termination motion cannot be resolved in 90 days and plaintiffs establish the prerequisites for equitable relief. Moreover, if a court issues a suspension order that is not justified under traditional equitable standards, prison authorities may obtain prompt appellate review under Section 3626(e)(4). And when a suspension order is justified, but a court fails to issue a prompt ruling, prison authorities may obtain mandamus to compel a prompt ruling. 18 U.S.C. 3626(e)(1) (Supp. IV 1998). Interpreting the automatic stay provision to permit a court to suspend the automatic stay therefore does not threaten Congress's goal of encouraging district courts to rule promptly on termination motions.

2. The State's legislative purpose argument also ignores a second, important purpose of the PLRA—to ensure that relief that is necessary to remedy a constitutional violation is not terminated prematurely. See 18 U.S.C. 3626(b) (Supp. IV 1998) (court shall not terminate relief that is necessary to remedy a violation of federal law); see also U.S. Br. 24-25 (discussing the drafting history of Section 3626(b)(3)). In our experience litigating termination motions, if the parties and the court work together, motions to terminate prison decrees that affect a single institution can

ordinarily be resolved within 90 days. Decrees that affect numerous institutions throughout a State, however, present a greater challenge. Even under the best of circumstances, it may not be possible to resolve a termination motion in such cases within 90 days.

In those cases that cannot be finally resolved within 90 days, if plaintiffs can show that a stay would cause irreparable injury and that they are likely to defeat the termination motion, a suspension of the stay would serve Congress's purpose of avoiding premature termination of relief that is necessary to remedy a constitutional violation. In contrast, the State's interpretation would frustrate that purpose.

One of the State's supporting amici argues (Washington Legal Foundation Br. 12 & n.3) that, in cases that cannot be resolved in 90 days, a court can enter a 90-day preliminary injunetion pursuant to 18 U.S.C. 3626(a)(2) (Supp. IV 1998). That provision, however, is in the part of the PLRA that addresses cases seeking new relief, not in the part of the Act that addresses termination of existing relief, and the two parts of the Act have distinct requirements. The preliminary injunction provision therefore applies only to requests for new relief. Amici's effort to stretch Section 3626(a)(2) to apply to termination motions, however, demonstrates their recognition that the State's interpretation of the automatic stay provision would defeat Congress's goal of avoiding premature termination of relief that is necessary to remedy a constitutional violation.

D. Avoidance Of Constitutional Question

1. The interpretation offered by the State and respondents also fails to accord with the principle that a court should avoid a construction of an Act of Congress



that would create a serious constitutional question when, as here, an alternative construction is possible. Their construction raises the serious constitutional question whether Congress violates Article III when it provides for the suspension of a final judgment of a court by operation of law without any judicial involvement in, or control of, the suspension decision. That question is a serious one because this Court in *Plaut* v. *Spendthrift Farm Inc.*, 514 U.S. 211, 226 (1995), quoted with approval Judge Iredell's statement in *Hayburn's Case*, 2 U.S. (2 Dall.) 409, 413 n.† (1792) (emphasis added), that "no decision of any court of the United States can, under any circumstances, . . . be liable to a revision, or *even a suspension*, by the Legislature itself, in whom no judicial power of any kind appears to be vested."

The constitutional question is particularly difficult because the automatic stay provision applies to pre-existing decrees. Because of that feature, the State's and respondents' interpretation invites the argument that the automatic stay provision not only effects a legislative suspension of court decisions, but does so based on congressional disagreement with the way the courts applied then-existing law to the facts of particular cases. We know of no other statute that raises the constitutional question that would be presented by the State's and respondents' interpretation. See U.S. Br. 34-37; see also p. 5 & note 1, *supra*. Nor does any decision of this Court conclusively resolve that question.

To avoid the serious constitutional question presented by the State's and respondents' interpretation, the automatic stay provision should be construed to permit a court to suspend the stay under traditional equitable standards. Because that interpretation gives

the court ultimate control over whether its judgment will be suspended, it does not pose any serious Article III question.

2. The State and respondents argue (State Br. 15; Resp. Br. 34) that the doctrine of avoiding serious constitutional questions does not apply because the automatic stay provision makes it clear that a court does not have authority to suspend the stay. See *Edward J. Debartolo Corp.* v. *Florida Gold Coast Bldg. & Constr. Trades Council*, 485 U.S. 586, 575 (1988) (principle of constitutional doubt does not apply if it would require a construction that is "plainly contrary to the intent of Congress"). As we have explained above, however, the automatic stay provision can readily be interpreted not to foreclose a court's authority to suspend the automatic stay. That is particularly true when it is read against the background principle that courts retain their traditional equitable authority absent the clearest congressional command to the contrary.

The State also argues (Br. 18) that the "statute need not be * * * construed" to permit equitable suspension because the State's alternative construction "suffers no constitutional infirmity." But the doctrine of constitutional avoidance applies when a construction of a statute would create a *serious* constitutional question. See *DeBartolo*, 485 U.S. at 575. Nothing in the State's defense of the constitutionality of its interpretation suggests that the constitutional issue is not a serious one. The principle that interpretations that raise serious constitutional questions should be avoided is therefore fully applicable, and reinforces the conclusion that the automatic stay provision should be interpreted to permit a court to suspend the automatic stay under traditional equitable standards.



### E. Constitutionality Of The State's And Respondents' Construction

While the constitutional question raised by the State's and respondents' interpretation is a serious one, we do not share respondents' view that the automatic stay provision would be unconstitutional if construed to foreclose equitable suspension of the automatic stay. Thus, if the Court rejects our interpretation of the automatic stay provision and accepts the interpretation offered by the State and respondents, it should still uphold the constitutionality of the automatic stay provision. Before explaining why we believe the serious constitutional problem we have identified is not fatal, we first address two other constitutional objections raised by respondents.

1. Respondents argue (Br. 13-19) that, as construed by the State and them, the automatic stay provision violates Article III, because it interferes *retroactively* with a final decision *without a relevant change in the law*. Both of the predicates of that argument are incorrect.

While the automatic stay provision applies to final judgments issued before the PLRA's effective date, it stays only the "prospective relief" in such judgments. 18 U.S.C. 3626(e)(1) (Supp. IV 1998). That limitation undermines respondents' argument that the automatic stay provision operates retroactively. When a statute only "affects the propriety of prospective relief, application of the new provision is not retroactive." *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 273 (1994); see also *American Steel Foundries* v. *Tri-City Trades Council*, 257 U.S. 184, 201 (1921) (explaining that "relief by injunction operates *in futuro*" and that plaintiffs do

not have a "vested right" to prospective relief in the decrees entered by a district court).

That is why the Court in *Plaut* had no difficulty distinguishing the statute upheld in *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1885), from the statute invalidated in *Plaut*. The statute in *Wheeling Bridge*, the Court explained, "altered the prospective effect of [an] injunction[] entered by [an] Article III court[]," *Plaut*, 514 U.S. at 232, and therefore did not implicate the principle that Congress may not enact retroactive legislation requiring a court to set aside a final judgment, *id.* at 240.

The automatic stay provision also makes a relevant change in the law. Before Congress enacted the automatic stay provision, a party filing a motion to terminate prospective relief was required to appeal to the equitable discretion of the court to obtain a stay of that relief pending a final decision on the motion. The automatic stay provision changed the law governing such stays. Under our interpretation, the applicable change is that a stay occurs after 30 (or 90) days, unless the plaintiff can satisfy the prerequisites for obtaining an equitable suspension. Under the State's and respondents' interpretation, the applicable change is that a stay occurs after 30 (or 90) days and ends when a court issues a ruling on the merits of the termination motion. Under either interpretation, the automatic stay provision changed the law governing such stays. We therefore disagree with respondents' contention that the automatic stay provision, as construed by the State and them, retroactively interferes with a final judgment without a change in the underlying law.[2]

---

[2] Respondents argue (Br. 16-17 & n.3) that Congress can affect prospective relief only when it makes a change in *substantive* law.



2. Nor do we share respondents' view (Br. 20-24) that the interpretation offered by the State and respondents would make the automatic stay provision unconstitutional under *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871). At most, *Klein* stands for the proposition that Congress may not require a court to decide a pending case in a particular way without changing the underlying law. *Id.* at 146; see *Robertson* v. *Seattle Audubon Soc'y*, 503 U.S. 429, 441 (1992) (noting court of appeals' view that *Klein* forbids Congress from "directing decisions in pending cases without amending any law"). The automatic stay provision does not direct the court to decide a termination motion in any particular way. Instead, it affects only whether prospective relief in a prior judgment will remain in effect during the period beginning 30 days after a termination motion is filed and ending when the court independently decides whether the motion should be granted. See *Hadix*, 144

---

Since the PLRA did not (and could not) change the substantive Eighth Amendment law governing prison conditions, respondents argue, it may not be applied constitutionally to the prospective relief in decrees entered before its effective date. That argument, which would also invalidate the *termination* provision's application to preexisting judgments, is incorrect. Even when Congress does not alter substantive law, Congress may, within broad constitutional limits, change the law governing equitable remedies for violations of the substantive law, and require such a change in remedial law to be applied to prospective relief in preexisting judgments. Thus, as the courts of appeals have uniformly concluded, Congress had authority to limit equitable remedies for violations of the Eighth Amendment to relief that extends no further than necessary to remedy the violation, and to require prospective relief in preexisting judgments to conform to that new remedial standard. See U.S. Br. 32 (citing cases).

F.3d at 940 (automatic stay provision "does not mandate a rule of decision").

Respondents argue (Br. 23-24) that, as construed by the State and them, the automatic stay provision violates *Klein* because it instructs courts to enter a "provisional" decision in the government's favor. That argument is unpersuasive for two reasons. First, the automatic stay provision does not instruct a district court to enter a decision or perform any other judicial function; instead, it transforms a party's motion into a stay by operation of law. Second, as discussed above, the automatic stay provision changes the law governing stays pending the resolution of termination motions, and *Klein's* "prohibition does not take hold when Congress amend[s] applicable law." *Plaut*, 514 U.S. at 218; see also *Robertson*, 503 U.S. at 438, 441 (finding no violation of *Klein* after determining that statute compelled changes in law, not findings or results under old law).

3. That leaves the serious constitutional objection that we have already identified—that the automatic stay, as interpreted by the State and respondents, impermissibly effects a legislative suspension of a final decision of a court without judicial involvement in, or control of, the suspension decision. For the following reasons, we believe that this objection, while serious, is not fatal.

First, a significant number of termination motions are capable of being resolved within 90 days. In those cases, a court has control over whether its judgment will be suspended.

Second, the automatic stay provision is a component of a broader scheme in which Congress has changed the law that applies to the issuance of equitable relief in prison conditions cases, provided that the prospective



relief in preexisting decrees must conform to those new equitable standards, and left it to the courts to decide whether the relief in preexisting decrees satisfies the new standards. As the courts of appeals have concluded, that broader scheme falls within Congress's authority under *Wheeling Bridge* to affect prospective relief in preexisting decrees. See U.S. Br. 32 (citing cases).

Third, the automatic stay provision applies not only to preexisting decrees, but also to post-PLRA decrees. It therefore resists characterization as simply a congressional effort to suspend particular decisions with which Congress disagrees.

Fourth, Congress has broad power not only to guide a court's exercise of equitable discretion, but to "control" it. *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 313 (1982). Congress has authority to foreclose a court from issuing equitable relief to preserve the status quo, *Yakus*, 321 U.S. at 441-444, and to require a court to issue equitable relief when certain facts are found, *TVA* v. *Hill*, 437 U.S. 153, 197-198 (1978). Those cases would seem to provide support for a statute that requires a court to grant a stay of its orders within 30 days of the filing of a termination motion pending a final decision on the motion. And, in functional terms, there is little difference between such a statute and one that effects a temporary suspension of a decision by operation of law.

Finally, given its context, Judge Iredell's statement can reasonably be limited to situations in which Congress exercises judgment in individual cases concerning whether a decision should be suspended. In such circumstances, Congress can only be understood as exercising judicial power. When, as here, Congress enacts a rule of law for an entire class of cases, and that

law affects only prospective relief, it can reasonably be viewed as exercising legislative power.

These points do not show that the constitutional issue presented by the State's and respondents' interpretation is not extremely serious. But on balance, we believe they are sufficient in combination to sustain the constitutionality of that interpretation.

4. There is no need, however, for the Court to decide the constitutional question presented by the State's and respondents' interpretation. Because the automatic stay provision is best read to permit a court to suspend the automatic stay under traditional equitable standards, and because that construction avoids a serious constitutional question, the Court should adopt that construction.

* * * * *

For the reasons discussed above, as well as those in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

SETH P. WAXMAN
*Solicitor General*

APRIL 2000

Mar 6 2000

Supreme Court, U.S.
FILED
MAR 6 2000
CLERK

Nos. 99-224 & 99-582

IN THE

# Supreme Court of the United States

CHARLES B. MILLER, ET AL,
*Petitioners,*
v.
RICHARD A. FRENCH, ET AL,
*Respondents.*

UNITED STATES OF AMERICA,
*Petitioner,*
v.
RICHARD A. FRENCH, ET AL.,
*Respondents.*

On Writs of Certiorari to the
United States Court for Appeals for the Seventh Circuit

## BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF RESPONDENT

ALAN B. MORRISON
*(Counsel of Record)*
DAVID C. VLADECK
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street, NW
Washington DC 20009
(202) 588 7720
*Attorneys for Public Citizen*

BEST AVAILABLE COPY

30pp

## QUESTION PRESENTED

Are the constitutional restrictions on Congress' power to enact retroactive legislation violated in this case where the legislation provides for an automatic stay of final judgments if a federal judge does not decide a motion to terminate the judgment within the time prescribed by Congress?

## TABLE OF CONTENTS

QUESTION PRESENTED ..... i

TABLE OF AUTHORITIES ..... iii

INTEREST OF THE AMICUS ..... 1

INTRODUCTION AND SUMMARY OF ARGUMENT . 2

ARGUMENT ..... 5

THE JUDGMENT SHOULD BE AFFIRMED BECAUSE THESE PROVISIONS OF THE PLRA ARE UNCONSTITUTIONAL. ..... 5

I. BECAUSE THE PLRA IS CLASSIC RETROACTIVE LEGISLATION, IT MUST BEAR A HEAVY BURDEN, WHICH IT CANNOT SUSTAIN. ..... 6

*A. The Meaning of Retroactivity* ..... 6

*B. This Court's Retroactivity Decisions Invalidate the PLRA* ..... 9

II. OF THE TWO PRINCIPAL CASES RELIED ON BY PETITIONERS, ONE (*PLAUT*) SUPPORTS THE FOREGOING RETROACTIVITY ANALYSIS, AND NOTHING IN THE OTHER (*WHEELING BRIDGE*) UNDERMINES IT. ..... 17

CONCLUSION ..... 24



## TABLE OF AUTHORITIES

### CASES

*Bowsher v. Synar*, 478 U.S. 714 (1986) ..... 2

*Eastern Enterprises v. Apfel*, 118 S. Ct. 2131 (1998) .... 4, 10

*INS v. Chadha*, 462 U.S. 919 (1983) ..... 2

*Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997), *cert. denied*, 118 S.Ct. 2366 (1998) ..... 2

*Johnson v. United States*, 163 Fed. 30 (1st Cir. 1908) ..... 6

*Landgraf v. USI Films Products*, 511 U.S. 244 (1994) ..... 3, 7-8, 12, 13

*Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935) ..... 15

*Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) ..... 4, 14

*Lynch v. United States*, 292 U.S. 571 (1934) ..... 15

*Martin v. Hadix*, 119 S. Ct. 1998 (1999) ..... 9, 11-12, 21

*Mistretta v. United States*, 488 U.S. 361 (1989) ..... 2

*Nixon v. Administrator of General Services*, 433 U.S. 425 (1977) ..... 22

*Pennsylvania v. Wheeling & Belmont Bridge*,
59 U.S. (18 How.) 421 (1856) ..... 4, 20-22

*Pennsylvania v. Wheeling & Belmont Bridge v. Pennsylvania*, 54 U.S. (13 How.) 518 (1852) ..... 20

*Pension Benefit Guaranty Corp. v. R. A. Gray & Co.*,
467 U.S. 717 (1984) ..... 9

*Plaut v. Spendthrift Farm*, 514 U.S. 211 (1995) ..... 3, 17

*Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984) ..... 16

*Rufo v. Inmates of Suffolk County Jail*,
502 U.S. 367 (1991) ..... 2

*Taylor v. United States*, 181 F.3d 1017 (9th Cir. 1999) .... 20

*United States v. Klein*, 80 U.S. (13 Wall) 128 (1872) .. 13-14

*United States v. Winstar*, 518 U.S. 839 (1996) ..... 4, 12-13

**STATUTES AND RULES**

Prison Reform Litigation Act,
18 U.S.C. § 3626 ..... 1
Section 802(b)(2) ..... 1, 2, 22, 23
Section 802 (e)(2) ..... 1, 15, 22, 23
Section 803(d)(3) ..... 8

Federal Rules of Civil Procedure
Rule 60(b) ..... 5, 10, 14, 18, 21, 22, 23
Rule 60(b)(5) ..... 21
Rule 65 ..... 10, 22



**MISCELLANEOUS**

Jill E. Fisch, *Retroactivity and Legal Change: An Equilibrium Approach*, 110 Harv. L. Rev. 1056 (1997) 7

*The Supreme Court -- Leading Cases, Eastern Enterprises v. Apfel*, 112 Harv. L. Rev. 212 (1998) ..... 11

## BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF RESPONDENT

## INTEREST OF THE AMICUS[1]

Public Citizen is a non-profit organization with approximately 150,000 members. This case raises important constitutional issues whose potential impact extends far beyond the prison litigation context that is directly at issue here. Public Citizen agrees with respondents that Congress' attempt in section 802(e)(2) of the Prison Reform Litigation Act, 18 U.S.C. § 3626 (the "PLRA"), to impose an automatic stay on a valid final judgment violates principles of separation of powers.

But the same principles that invalidate the automatic stay provision also invalidate section 802(b)(2) of the PLRA, under which existing final judgments, both litigated and consensual, may be altered at the request of defendants, even though there has been no underlying change in the facts or the applicable law that formed the basis of those judgments. Since the automatic stay provisions can only be justified as a means to assure the prompt implementation of section 802(b)(2), the invalidity of the latter provision would render the automatic stay provision invalid as well.

In this brief, which is submitted with the consent of the parties, *amicus* will discuss the principal separation of powers cases relied on by the parties, although with a somewhat different approach to them. It will also rely on other decisions of this Court in which the law being challenged had the same kind of impermissible retroactive effect that is contained in both sections 802 (b)(2) and (e)(2). Thus, the focus of this brief

---

[1] No person other than the *amicus curiae* and its counsel authored or made a monetary contribution toward the preparation or submission of this brief.

is on explaining why the PLRA violates this Court's long-standing rule that retroactive legislation is highly disfavored and is constitutionally suspect.

Through its Litigation Group, Public Citizen has provided counsel in many of this Court's most important separation of powers cases, including *INS v. Chadha*, 462 U.S. 919 (1983), *Bowsher v. Synar*, 478 U.S. 714 (1986), and *Mistretta v. United States*, 488 U.S. 361 (1989). Its attorneys were also co-counsel in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1991), which prompted Congress to pass the PLRA, and in the unsuccessful effort by the plaintiffs in *Rufo* to overturn section 802(b)(2), *Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997), *cert. denied*, 118 S. Ct. 2366 (1998). Its lawyers have in the past, and expect in the future, to represent plaintiffs (including prisoners) in lawsuits against agencies of the state and federal governments that may result in injunctive relief and/or consent decrees. If the PLRA is upheld, Congress may well extend its retroactive approach to other areas where governments find it inconvenient to abide by promises made to settle litigation.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The PLRA changes the rules under which final judgments — whether based on a consent decree or a court ruling — may be altered to relieve both state and federal prison officials from their existing obligations. There is no disagreement that Congress made it much easier for those officials both to terminate existing court orders and to obtain stays of them until the courts have an opportunity to determine whether the existing orders should be continued. Nor is there any doubt that Congress did not attempt to change (not could it have changed) the substantive law under which those judgments were entered — the Eighth and Fourteenth



Amendments to the Constitution. We assume for purposes of this case that Congress may apply the PLRA to decrees entered after its effective date, although, as we argue *infra* at 22-23, even in that context the automatic stay provision violates separation of powers because it interferes with the ability of Article III judges to carry out their constitutionally assigned function of deciding cases on the facts and law, not based on legislatively-imposed deadlines. However, the principal issue presented in these consolidated petitions is whether Congress may constitutionally impose the PLRA retroactively to alter existing consent decrees and litigated final judgments.

The effect of the PLRA is no different than if Congress legislatively added an automatic termination date to existing decrees that contained no such provision. Although the PLRA theoretically allows respondents and other classes of prisoners to maintain their decrees, that can occur only if they can prove a current violation of federal law. Even that possibility cannot save the statute because requiring respondents to start over again deprives them of the benefit of the long-term bargains they struck when their decree was entered. Therefore, if the PLRA is upheld, respondents will have sacrificed their existing rights and obtained no more than the opportunity to bring another lawsuit.

The issue presented here is analytically identical to that in cases where this Court has carefully scrutinized attempts by Congress to alter existing rights by retroactive legislation. Although resolved on statutory grounds, *Landgraf v. USI Films Products*, 511 U.S. 244 (1994), spells out the constitutional considerations that determine whether the retroactive aspects of a law, such as the PLRA, will be upheld, including the breadth of the change in the law and the extent to which that change was foreseeable. In some cases, such as *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), the rights of those affected by

a retroactive change in the law were embodied in a litigated judgment, while in others, such as *United States v. Winstar*, 518 U.S. 839 (1996), and *Eastern Enterprises v. Apfel*, 118 S. Ct. 2131 (1998), they were based on contractual arrangements like the consent decree at issue in many prisoner cases. And in others, such as *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), the rights were not embodied in any written agreement, but were part of a general understanding of the kinds of protections that private parties have from governmental interference with their property. Although this Court has been willing to allow certain kinds of changes in existing rights, it has done so only after carefully weighing the legitimate expectations of the private party and the governmental interests at stake.

The PLRA was intended to eradicate rights to continuing relief granted prisoners in existing consent decrees, regardless of what they gave up in exchange for those rights, and with no showing of the kind of strong governmental interest that might justify such an invasion of respondents' legitimate decree-based expectations. However, the courts that have considered the constitutionality of the PLRA have failed to analyze how the PLRA fits into this Court's rulings involving retroactive legislation. Those courts have mistakenly relied on *Pennsylvania v. Wheeling & Belmont Bridge*, 59 U.S. (18 How.) 421 (1856), but that case merely recognizes that a change in the substantive law on which an injunction is based (which petitioners admit did not occur here) is a valid reason for modifying the injunction prospectively, particularly when the entity against which the injunction was issued (the bridge owner) was not the entity that made the change in the law (Congress). Surely, if an industry had obtained a decree against a federal agency that established a mutual set of rights and obligations like those in this decree, and if Congress passed a law allowing that agency to walk away from its duties, as



petitioners Miller *et al.* will be able to do here, this Court would scrutinize such a law with great care and not permit Congress to legislate retroactively in the absence of a substantial justification. The fact that respondents are prisoners, rather than businesses, should only heighten the need for scrutiny, given their lack of power and their inability to defend themselves in the legislative arena.

When properly examined as retroactive legislation, the PLRA must fall. The existing rights of prison officials to modify consent decrees, as set forth in *Rufo* and Rule 60(b) of the Federal Rules of Civil Procedure, provide them ample protection against changed circumstances, while assuring that both sides retain their bargained-for benefits. Similarly, the automatic stay provision, which shifts the burden from the party seeking to overturn an existing order to the party seeking to maintain it, not only interferes with the orderly judicial consideration of termination motions, and destroys reasonable and settled expectations of the beneficiaries of such orders, but is wholly unnecessary to protect the legitimate interests of prison officials who already have adequate abilities under Rule 60(b) to seek emergency modifications of court orders if they can establish the basis for doing so.

## ARGUMENT

### THE JUDGMENT SHOULD BE AFFIRMED BECAUSE THESE PROVISIONS OF THE PLRA ARE UNCONSTITUTIONAL.

Before turning to the constitutional issue, we note our agreement with petitioner Miller (the "State") and respondents that the automatic stay provision is most reasonably construed as a bar to any further stays being issued by the federal courts. Try as it may, the United States cannot engender anything

approaching a reasonable doubt that Congress meant what it said when it established a firm deadline for district courts to rule on motions to terminate existing final judgments. As Justice Holmes, sitting as a Circuit Justice, said in *Johnson v. United States,* 163 Fed. 30, 32 (1st Cir. 1908), "it is not an adequate discharge of duty for courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before." If there ever were a case in which it was clear what Congress was "driving it" — it wanted courts to decide motions to terminate prisoner decrees within the time limits that Congress established – this is it.

Furthermore, the position of the United States does not eliminate the constitutional infirmity. It would allow additional stays but only if the party in whose favor the judgment exists proves both that it is likely to prevail (once again) and that it (not the defendant) will suffer irreparable harm if the automatic stay is imposed. That construction suffers from the same flaw as the State's, although its impact may be a little softer around the edges, because, under either view, Congress has stripped from prisoners the right to retain the benefits of a valid final judgment, until a federal judge can properly decide whether to modify it.

## I. BECAUSE THE PLRA IS CLASSIC RETROACTIVE LEGISLATION, IT MUST BEAR A HEAVY BURDEN, WHICH IT CANNOT SUSTAIN.

### *A. The Meaning of Retroactivity*

The theory on which the lower courts have upheld both the automatic stay and the ultimate termination provisions is that the relief being terminated is injunctive in nature and therefore is not subject to the final judgment rule. However,



that theory fails to take into account the fact that, in applying the PLRA to existing consent decrees, Congress has imposed new, and for respondents, highly disadvantageous rules for existing judgments and therefore enacted impermissible retroactive legislation. *See generally* Jill E. Fisch, *Retroactivity and Legal Change: An Equilibrium Approach*, 110 Harv L. Rev. 1056 (1997).

This Court's most recent and complete discussion of the objections to retroactive legislation is in *Landgraf v. USI Films Products*, 511 U.S. 244 (1994), where the Court construed the statute at issue not to apply retroactively. The opinion of Justice Stevens for the Court is relevant to this case in a number of respects. First, it defines retroactive legislation as that which "attaches new legal consequences to events completed before its enactment." *Id.* at 270. That description fits this situation like a glove, since the PLRA adds new rights for the State to obtain automatic stays of, and eventually to terminate, a series of judgments and consent decrees that have been entered over the past 20 years.

Second, the Court recognizes that there are constitutional objections to retroactive civil legislation. Although the Court has described the requirements of meeting them as "modest," *id.* at 272, in practice it has taken a close look at retroactive legislation, often striking it down under other constitutional doctrines. Third, it recognizes that the concerns about retroactive legislation are reflected in a number of specific constitutional provisions, such as the Ex Post Facto Clause, the Takings Clause, the Due Process Clauses, the Contract Clause, and the prohibition against Bills of Attainder. *Id.* at 266. Whether or not any of those specific prohibitions applies to this case, the policies behind them all support the Court's deep concerns over retroactive laws like the PLRA.

Fourth, a number of the specific objections voiced in *Landgraf* mirror this situation. Thus, the same "elementary considerations of fairness [that] dictate that individuals should have the opportunity to know what the law is and conform their conduct accordingly," that were found wanting in *Landgraf* because "settled expectations [were being] disrupted" (*id.* at 265) are being trampled on here. The PLRA has disrupted existing consent decrees and destroyed respondents' reasonable reliance on the inability of the State to walk away from its obligations, causing respondents to lose "confidence about the legal consequences of their actions." *Id.* at 266. Similarly, the PLRA affects "contractual or property rights, matters in which predictability and stability are of prime importance." *Id.* at 271. At bottom, concerns about retroactive laws are about "fair notice, reasonable reliance, and settled expectations," *id.* at 270, each of which is at issue here.

Fifth, even if the PLRA could be viewed as a change in procedural rules, *Landgraf* eliminates any notion that such a label ends the inquiry: "Nor do we suggest that concerns about retroactivity have no application to procedural rules." *Id.* at 275 n. 29. Justice Scalia's concurring opinion underscores that point by his example that a change in a rule of evidence, which would be procedural, could not be applied to testimony already given. *Id.* at 291-92.

Finally, Justice Stevens points to a particular vice of retroactive legislation that relates to its equal protection component: "The Legislature's unmatched powers allow it to sweep away settled expectations suddenly and without individual consideration. Its responsivity to political pressures pose a risk that it may be tempted to use retroactive legislation as a means of retaliation against unpopular groups or individuals." *Id.* at 266.



Last Term, in *Martin v. Hadix*, 119 S. Ct. 1998 (1999), this Court construed section 803(d)(3) of the PLRA, which limits the hourly rate for attorneys in prison litigation, not to apply to work performed before the effective date of the Act. Although the case was decided on statutory grounds, the opinions of Justice O'Connor for the majority, and Justice Ginsberg for the partial dissent, employ terminology that implicitly confirms the constitutional basis for the presumption against retroactivity. Thus, the majority spoke of "an impermissible retroactive effect" (*id.* at 2003), "retroactivity concerns" (*id.* at 2007), and "retroactivity problems" (*id.*), while the dissent twice described the effects of applying the law to litigation begun before the effective date as "impermissibly retroactive." *Id.* at 2011.

*B. This Court's Retroactivity Decisions Invalidate the PLRA.*

Most of this Court's decisions dealing with due process challenges to retroactive legislation have involved businesses that claimed that Congress added burdens to transactions that were already completed. For example, in *Pension Benefit Guaranty Corp. v. R. A. Gray & Co.*, 467 U.S. 717 (1984), Congress increased the withdrawal liability obligations of companies that participated in common pension funds, with an effective date five months prior to enactment. In sustaining the law, this Court noted that a statute's retroactive feature must be justified by a legislative purpose beyond that needed to sustain its prospective application. *Id.* at 730. Yet the defenders of the PLRA have offered nothing more than an assertion that existing decrees create obligations that they and Congress would prefer to eliminate. Obviously, if that rationale suffices, no retroactive law would be invalid.

The burden was satisfied in *Gray* because retroactivity was needed to remove incentives to avoid the new rules, and

the period of retroactivity was limited and narrowly tailored to achieve that end. *Id.* at 731. By contrast, in this case, there is no claim that non-retroactive application of the PLRA would facilitate avoidance of federal law, and the termination provision is permanent. Nor can the automatic stay be justified by the kind of practical argument employed in *Gray* since it is always open to the State to move to alter a judgment under Rule 60(b), including a request for preliminary relief under Rule 65, if it can meet the stringent requirements. What Congress cannot do is shift the burden to respondents to justify the continuation of existing orders, which is what would occur even under the interpretation urged by the United States.

Another example of close scrutiny of retroactive legislation is found in *Eastern Enterprises v. Apfel*, 118 S. Ct. 2131 (1998), where this Court held that Congress had violated the Constitution by requiring companies that were no longer in the coal business to pay for health benefits for families of miners who once worked for them. Justice O'Connor, speaking for a plurality of four, found that the law was an unconstitutional taking; Justice Kennedy found the Takings Clause inapplicable, but he concluded that the retroactive application of the law bore "no legitimate relation to the interest which the Government asserts in support of the statute" and hence violated due process. *Id.* at 2159.

The differences between those opinions are less significant than their common themes. Both recognized the law's deep concern over retroactive statutes: Justice O'Connor described them as "generally disfavored," and Justice Kennedy noted "a singular distrust" of such laws. *Id.* at 2151, 2158. Their descriptions of what makes a retroactive law an unconstitutional taking or a violation of due process are also similar. As Justice O'Connor described the test, a retroactive law "might be unconstitutional if it imposes severe retroactive



liability on a limited class of parties that could not have anticipated the liability, and the extent of that liability is substantially disproportionate to the parties' experience." *Id.* at 2149; *see also id.* at 2152-53 (focusing on the "distance into the past that the Act reaches back," the "unusual" nature of the act that "singles out certain employers to bear a burden that is substantial in amount"). Justice Kennedy's concern was with "severe retroactive legislation" that "destroys the reasonable certainty and security which are the very objects of property ownership." *Id.* at 2159. While the words are different, the approaches are quite similar, and both evidence a strong predilection against retroactive legislation.

Finally, both opinions cite cases relied on by the other and recognize that the Takings and Due Process Clauses are interrelated and tie in with other, similar constitutional limits on governmental power. *Id.* at 2149, 2151, 2153 (plurality), and 2157-58 (Kennedy, J.). Even the dissent of Justice Breyer, which was joined by Justices Stevens, Souter, and Ginsburg, noted the "potential unfairness of retroactive legislation" and agreed that a due process inquiry was appropriate to determine whether a law "is fundamentally unfair or unjust." *Id.* at 2163, 2164. In sum, there is "a bedrock principle with which all nine Justices seemingly concurred: the Constitution will not tolerate legislation that retroactively imposes unexpected liability on a party for a problem not of its own creation." *The Supreme Court -- Leading Cases, Eastern Enterprises v. Apfel*, 112 Harv. L. Rev. 212, 213 (1998); *id* at 218-22. Nonetheless, none of the courts of appeals that have reviewed the PLRA — both the automatic stay and the termination provision — have considered the PLRA from this perspective.[2]

---

[2] Both the majority and the dissent in *Martin v. Hadix*,

(continued...)

Another recent decision involving contract rights, *United States v. Winstar*, 518 U.S. 839 (1996), also directly supports the position of *amicus*. None of the *Winstar* opinions used the term retroactive legislation, but that is what was at issue. The Government had entered into contracts to bail out insolvent thrift institutions; in turn, the companies that acquired the thrifts were allowed to use certain favorable accounting devices to satisfy the capitalization requirements under the law. After the transactions were completed, Congress amended the law to forbid those accounting devices, thereby placing the acquiring companies in immediate violation of the law's capital requirements. The Court held that the Government could not avoid the obligations to which it had agreed and on which the companies had relied in contracting with the Government.

In one sense the law in *Winstar* was not retroactive since it operated only prospectively and did not cause a default

---

[2](...continued)
*supra*, described the relevant factors in assessing retroactivity in terms that closely resemble this due process analysis, although the two opinions disagreed about the applicability of those factors in that case. Thus, while Justice O'Connor spoke of "reasonable reliance" (*id.* at 2006), "reasonable expectations of the parties" (*id.* at 2007), and "no manifest injustice" (*id.*), Justice Ginsburg described the law as one that "significantly alters the consequences of [prior conduct]" (*id.* at 2011) and "frustrates reasonable reliance on prior law" (*id.* at 2012). Justice Scalia's concurrence would make retroactivity turn on whether the law affected "primary conduct" (*id.* at 2008). Since respondents' "primary conduct" was the decision to enter what they believed was a mutually-binding consent decree, the law would have an impermissible retroactive effect on them under Justice Scalia's approach as well.



for events that occurred prior to its effective date. But it was surely retroactive as the Court defined that term in *Landgraf* since it clearly "attaches new legal consequences to events completed before its enactment." 511 U.S. at 270. Because the accounting practices that were permitted beforehand were subsequently banned by Congress, the companies were unable to continue with the transactions on which those practices were based, just as if Congress had passed a law terminating the prior agreements with the Government, as Justice Souter recognized. *Id.* at 878 n.22.

Moreover, many of the policy concerns underlying the majority and concurring opinions in *Winstar* support a holding that the PLRA is unconstitutional because of its severe retroactive impact. In particular, the *Winstar* Court was deeply troubled by the Government's claim that it could upset the entirely reasonable reliance interests of those with whom it had contracted and shift the costs occasioned by the change in law to them, just as was attempted in the other retroactivity cases. As Justice Scalia put it, if the Government can change its obligations by enacting a new law, then the PLRA is "an absolutely classic description of an illusory promise" (*id.* at 921), which is what the consent decree here will become if the PLRA is upheld.

Another case in which this Court declined to apply a law having retroactive application is *United States v. Klein*, 80 U.S. (13 Wall) 128 (1872). Again, like *Winstar*, the Court did not describe the law as retroactive, but there is no doubt that it was. Congress had authorized the confiscation of property of those who aided the Confederacy in the Civil War, but a prior statute had allowed the President to pardon those who had fought on the other side. This Court then ruled that a person who was pardoned was entitled to avoid confiscation, to which Congress responded by passing a law saying that a pardon

could not be offered in evidence to defeat confiscation. Mr. Klein argued that Congress did not have the authority to alter the outcome of his case, in which the United States Government was his adversary, and this Court agreed. Again, while the language of the decision is not that of a challenge to a retroactive law that benefitted the United States, that is surely what was at stake for those like Mr. Klein who had applied for a pardon and taken an oath to support the United States before Congress acted.[3]

Similar concerns animate this Court's regulatory takings decisions, such as *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). In *Lucas*, new zoning rules effectively eliminated all significant previously allowed uses for the property owner's beachfront land, thereby rendering his investment almost worthless. In balancing the state's interest in land use regulation against the property owner's reasonable investment-backed expectations, the Court held that major changes in the lawful uses of property would require compensation by the state, except when "background principles of nuisance and property law" made such changes reasonably foreseeable. *Id.* at 1030. Seen from this perspective, the zoning change in *Lucas* was like the imposition of major new financial obligations in *Eastern Enterprise* or *Winstar*, in contrast to the modest and foreseeable change in *PBGC v.*

---

[3] In an apparent effort to camouflage the retroactive and substantive nature of the change in the law, Congress put the prohibition in terms of evidence that could be heard and also sought to bar this Court from reviewing cases in which a pardon had been set up as a defense to confiscation. 80 U.S. at 143. Neither device fooled the Court or prevented it from striking down the law as applied to Mr. Klein (and presumably others similarly situated).



*Gray*. As applied to this case, the "background principles" of law are Rule 60(b) and cases like *Rufo* interpreting it, which contain express, but limited, exceptions to the rule that consent decrees (and litigated judgments) can be altered only if all parties agree. They also govern how motions to modify those decrees should proceed procedurally, which does not include anything like the automatic stay provision of section 802(e)(2).

Two cases from the 1930s confirm that the Takings Clause also reaches retroactive laws when they affect rights between private parties. Thus, in *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 578 (1935), the Court struck down a federal statute that significantly altered the rights of holders of "pre-existing mortgages." As the Court explained, "the Act is retroactive in terms and as applied purports to take away rights of the mortgagee in specific property" that had been acquired by the bank prior to passage of the Act. *Id.* at 589, 590. The statute was not infirm because it compromised the debt of the farmer who owned the property, but because it produced "a substantial impairment of the security" given to protect the lender. *Id.* at 595. While Justice Brandeis recognized that a different mortgage contract might have afforded the farmer the protections that Congress granted him, that did not permit Congress to alter rights under contracts already executed -- in that case more than ten years before Congress acted. *Id.* at 596. Similarly, in *Lynch v. United States*, 292 U.S. 571, 579 (1934), an attempt to invalidate the Government's contractual obligations to pay on War Risk Insurance policies was rebuffed under the Fifth Amendment's Taking Clause: "Valid contracts are property, whether the obligor be a private individual, a municipality, a State, or the United States." In this case the Court need not decide whether these consent decrees are "private property" within the meaning of the Takings Clause, because there can be no doubt that the rights created under them are either "property" or "liberty"

within the broader protections accorded by the Due Process Clause.

Finally, the relation between retroactive legislation and the concepts of settled expectations and reasonable reliance is illustrated by *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984). At issue there was the right of the Government to insist that companies wishing to sell certain pesticides disclose trade secret information. In striking the balance between the competing interests, the Court drew the line based on whether the disclosure requirement was in place when the pesticide application was submitted. *Id.* at 1007. Where it was, disclosure could be required because, as the *Lucas* court might put it, "background principles" of law would no longer protect the pesticide maker's claimed right of confidentiality.

Applying these principles to the PLRA would surely require its invalidation. The decrees in this case have been entered over a 20 years period, during which respondents had no notice of any possibility that the decrees could be terminated, or even automatically stayed, except for reasons provided in the decree or in the law of equity. Respondents gave up short-term benefits for long-term security, but if the PLRA is upheld, they will be deprived of a substantial portion of their bargain. Petitioners have offered no justification for the PLRA other than the fact that federal and state prison officials would prefer to be relieved of obligations that they undertook in exchange for agreements by prisoners not to continue with their lawsuits. Balancing respondents' reasonable reliance on the expectations arising from the consent decrees, against the lack of any basis for retroactivity other than a desire by prison officials not to be subject to court orders dealing with their prisons, the PLRA plainly constitutes "impermissible



retroactive" legislation.[4]

## II. Of the Two Principal Cases Relied on by Petitioners, One (*Plaut*) Supports the Foregoing Retroactivity Analysis, and Nothing in the Other (*Wheeling Bridge*) Undermines It.

In *Plaut v. Spendthrift Farms, Inc.*, 514 U.S. 211, 219 (1995), this Court sustained a challenge to an act of Congress that "retroactively commands the federal courts to reopen final judgments" by extending the statute of limitations after the time for appeals from those judgments had expired. The defendants had argued against retroactivity on both due process and separation of powers grounds, but the Court ruled on what it called the narrower separation of powers basis since the alternative ground would have implicated state as well as federal statutes. *Id.* at 217.

Justice Scalia's opinion focuses on the special dangers of legislative overrulings of judicial decisions, including the historical basis in separation of powers for such concerns. And his conclusion that there must be a "categorical" invalidation of

---

[4] All of the cases cited above involved retroactive economic legislation, and some of the Court's statements are expressly qualified by the term "economic." *Amicus* is not aware of any cases in which non-economic retroactive legislation has been challenged in court. But given this Court's general practice of providing very limited review of economic legislation, and since the PLRA infringes on respondents' ability to obtain vindication of their constitutional right to humane treatment, the standard of review here should be at least as rigorous as in economic rights cases.

legislative attempts to alter judicial judgments, *id.* at 240, is appropriate only under a separation of powers analysis since, under a due process/retroactivity analysis, a balancing of the interests is required. But his concerns about overturning settled (finalized) expectations extend to all retroactive legislation, not just that affecting court judgments (*id.* at 219, 227), as illustrated by the portions of his opinion that mention other parts of the Constitution that guard against retroactive laws. *Id.* at 237-38.

The opinion is most relevant for the PLRA when it rebuts the claim that the change in the statute of limitations can be saved by analogy to Rule 60(b). *Id.* at 233-34. The opinion acknowledges that Rule 60(b) refutes the notion that final judgments can never be reopened, but the Court specifically held that the standards contained in that Rule may not be expanded by Congress by imposing "a reopening requirement which did not exist when the judgment was entered" (*id.* at 234) — once again an exact description of the impact of the PLRA in this case.

One of the major flaws in petitioners' briefs is their failure to recognize that the principles in *Plaut* extend beyond the stated Article III basis of the decision. Suppose that the case in which the statute of limitation was extended had been litigated to final judgment in a state court. *Plaut* would not literally apply, and a decision in that case would probably not produce the kind of categorical outcome mandated in *Plaut*. But surely this Court would have to examine the impact of the law under the principles of retroactivity described above and confirmed by *Plaut*.

Or suppose that the NLRB had awarded back pay to workers in a dispute with their employer, or the FCC had resolved a contest between two broadcasters over the right to a



radio license, or two businesses had concluded a private arbitration under the Federal Arbitration Act. Suppose further that, after each of those determinations became final, Congress passed a law that altered the outcome of those cases. The fact that none of those cases reached a court of any kind would not make the concerns underlying *Plaut* irrelevant. Rather, the victor in those three proceedings would have the same type of grievance that the defendant had in *Plaut*: a decision that each had every reason to believe was final but would no longer be valid because of a retroactive statute.

There is also no rationale for limiting the triggering event to Congress passing a law, even though that was the focus of this Court's separation of powers discussion in *Plaut*. For example, suppose that the times for petitioning for rehearing in the courts of appeals, or for seeking a new trial in the district courts — both of which are set by the judicial branch — were extended *after* the existing times had expired. In those situations, the retroactive effect would be the same as in *Plaut*: a final judgment would be reopened. If the determinative fact in *Plaut* were that Congress had stepped in, then the parties in those cases who had their victories re-opened would lose their challenges to the retroactive application of the new timing rules. But surely the basic policy reasons behind *Plaut* would apply in the case of judicial interference as well since the impact on the parties in both situations is identical.[5]

---

[5] The fact that a change in the law would not necessarily cause the original losing party to win the case, rather than simply getting to try again, is irrelevant since in *Plaut* itself the new law only removed the bar of the statute of limitations, but did not assist the plaintiffs in establishing their claims on the merits.

In our view, *Plaut* is an extreme example of the reasons why this Court has long expressed very serious concerns about retroactive legislation. There, the legislative branch not only unsettled settled expectations, but also directly overruled a determination by a coordinate branch of government, whose constitutional function is to decide the legal effects of completed transactions. For that reason, the statute in *Plaut* directly infringed the constitutionally-mandated independence of another branch of government, as well as injuring the parties for whom the rule of law was retroactively changed. But as the cases cited above demonstrate, there are broader principles underlying *Plaut*, and those principles apply to invalidate the PLRA as well.

The lower courts that have upheld the PLRA have done so primarily because of their reading of *Pennsylvania v. Wheeling & Belmont Bridge*, 59 U.S. (18 How.) 421 (1856). Properly read, *Wheeling Bridge* does not bear anywhere near the weight that most courts and petitioners place upon it. Indeed, even the dissent in *Taylor v. United States,* 181 F.3d 1017 (9th Cir. 1999) (*en banc*), while voting to uphold the PLRA, recognized that the impact of *Wheeling Bridge* is less clear and not nearly so important as other courts have believed. *Id.* at 1037.

*Wheeling Bridge* began with a suit by Pennsylvania to have the bridge declared an obstruction to the river which was used to transport goods from Pennsylvania ports. The problem was that the height of the bridge required vessels to lower their pipes to get under it, which was very expensive and time-consuming. Pennsylvania's claim was that the bridge was contrary to congressional enactment and an obstruction to navigation, and this Court agreed. *Pennsylvania v. Wheeling & Belmont Bridge v. Pennsylvania,* 54 U.S. (13 How.) 518, 565-66 (1852). Congress then passed a law permitting the bridge to



remain in place, and Pennsylvania challenged that law.

This Court held that the injunction against the bridge must be lifted because "there is no longer any interference with the enjoyment of the public right [of passage] inconsistent with the law." 59 U.S. at 432. In other words, because the federal statute on which Pennsylvania relied to obtain its injunction was no longer in effect, the State no longer had any right to prevent the use of the bridge.

*Wheeling Bridge* is cited by petitioners and various lower courts in defense of the PLRA for the proposition that an injunction is never final and can always be modified by the legislature. But that view is overly expansive. The principal import of *Wheeling Bridge*, on which there is no disagreement, is that, when the substantive law that formed the basis of an injunction is changed, the injunction can and must be modified. Indeed, that appears to be the limited proposition for which Justice Scalia cited *Wheeling Bridge* in his concurring opinion in *Martin*, *supra*, 119 S. Ct. at 2009.

That proposition, however, simply mirrors existing law in Rule 60(b)(5) that allows modification when it is "no longer equitable that the judgment should have prospective application." That principle does not apply here because the substantive law of the Eighth and Fourteenth Amendments, on which these consent decrees were based, has not been changed, and indeed Congress lacks the power to do so. Nor, as *Plaut* establishes, can Congress bootstrap its way out of that limitation by adding a new ground for terminating existing consent decrees under Rule 60(b), which is the effect of the retroactive termination aspects of the PLRA. Instead, the Court must examine the retroactive aspects of the PLRA, including its impact on existing injunctions, under the standards set forth above and in light of the existing provisions of Rule 60(b).

*Wheeling Bridge* may have some bearing on that analysis, but it is not the "get out of jail free card" (or, more accurately, the "get out of consent decree free card") that petitioners and many lower courts contend that it is.

There is one other aspect of *Wheeling Bridge* that bears noting: the party against whom the injunction was issued and that benefitted from a change in the law (the bridge owner) was not the sovereign that changed the law (the United States). The absence of this kind of a self-serving element in *Wheeling Bridge*, in contrast to cases like *Klein* and *Winstar*, further undercuts the inapplicability of *Wheeling Bridge* in this situation since the PLRA's benefits accrue to both federal and state prison officials against whom existing decrees were pending when Congress enacted these retroactive provisions.

Finally, although we believe that, for most purposes, and surely for purposes of the retroactivity analysis set forth above, there is no constitutional difference between the automatic stay provision in section 802(e)(2) and the termination provision in 802(b)(2), we agree with the argument made in respondents' brief that there is one respect in which the automatic stay provision presents additional constitutional objections. Apart from its retroactive aspect, the automatic stay is an unreasonable intrusion on the proper working of a coordinate branch of government and is unconstitutional for that reason. *See Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977). Under *Nixon v. GSA*, there is a violation of separation of powers if the law "prevents the . . . [b]ranch from accomplishing its constitutionally assigned function" unless that "impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." *Id.*



Here, it is apparent that imposing an automatic stay on all existing court orders, unless a congressionally imposed deadline is met, in effect, forces Article III judges to decide a motion to terminate without giving the matter the attention to the facts and law that the judge believes it deserves. In essence, these kinds of rigid deadlines deny Article III judges the ability to carry out their constitutionally assigned judicial functions. Moreover, there is no "overriding need" here since Rules 60(b) and 65 already provide petitioners with a full opportunity to modify existing decrees if circumstances truly warrant a change. The real reason that the termination provision in section 802(b)(2) was enacted was that Congress and prison officials did not like the existing final judgments that federal courts had entered, and so Congress decided that it would do something about them, legislatively and retroactively. As part of its package, Congress decided to tie the hands of federal judges by forcing them to act on motions to terminate within unreasonably short deadlines, and directing that, if they did not, the decrees would immediately vanish, at least until the judges acted on the termination motions. That kind of legislative interference with judicial decisionmaking is forbidden by separation of powers, even if imposed only on a prospective basis. This rationale provides a further basis for striking the automatic stay in section 802(e)(2), while leaving the constitutionality of the termination provision in section 802(b)(2) to another day.

## CONCLUSION

The judgment below should be affirmed.

Alan B. Morrison
(Counsel of Record)
David C. Vladeck
Public Citizen Litigation Group
1600 20th Street, NW
Washington DC 20009
(202) 588 7720
Attorneys for Public Citizen

March 6, 2000

Mar 6 2000

Supreme Court, U.S.
FILED
MAR 6 . 2000
CLERK

Nos. 99-224 and 99-582

IN THE
# Supreme Court of the United States

---

CHARLES B. MILLER, *et al.*,
*Petitioners,*

v.

RICHARD A. FRENCH, *et al.*,
*Respondents.*

---

**On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit**

---

## BRIEF OF AMICUS CURIAE PLAINTIFF CLASS OF PRISONERS IN *TAYLOR v. STATE OF ARIZONA* IN SUPPORT OF RESPONDENTS

---

JOHN P. FRANK
*Counsel of Record*
RANDY PAPETTI
JON WEISS
LEWIS AND ROCA
40 North Central Avenue
Phoenix, Arizona 85004
(602) 262-5311
*Counsel for Amicus Curiae*

WILSON-EPES PRINTING CO., INC. - (202) 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

## TABLE OF CONTENTS


| | Page |
|---|---|
| TABLE OF AUTHORITIES | ii |
| INTEREST OF AMICUS | 1 |
| SUMMARY OF ARGUMENT | 2 |
| ARGUMENT | 4 |
| I. THE AUTOMATIC STAY PROVISION VIOLATES SEPARATION OF POWERS | 4 |
| A. The History Defining the Separation of Powers Doctrine | 4 |
| B. The Constitutional History and *Plaut* Condem the Automatic Stay Provision | 7 |
| 1. The Automatic Stay Provision Operates to Reopen Final Judgments | 8 |
| 2. The Automatic Stay Provision Operates Retroactively | 9 |
| 3. *Wheeling Bridge* Is Inapplicable | 10 |
| C. The Automatic Stay Provision Imposes Undue Burdens on Prisoners' Judgment Rights | 14 |
| CONCLUSION | 17 |

## TABLE OF AUTHORITIES


| *Cases* | Page |
|---|---|
| *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986) | 7 |
| *Hayburns Case*, 2 U.S. (2 Dall.) 409 (1792) | 4 |
| *Hook v. State of Arizona*, 972 F.2d 1012 (9th Cir. 1992) | 10 |
| *Northern Pipeline Construction v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) | 6, 7 |
| *Pennsylvania v. The Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855) | 3, 11, 12 |
| *Plaut v. Spendthrift Farms, Inc.*, 514 U.S. 211 (1995) | *passim* |
| *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367 (1992) | *passim* |
| *Stone v. City and Cty. of S.F.*, 968 F.2d 850 (9th Cir. 1992) | 8 |
| *System Federation No. 91 v. Wright*, 364 U.S. 642 (1964) | 11, 13 |
| *Taylor v. United States*, 181 F.3d 1017 (9th Cir. 1999) | 10, 12 |
| *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871) | 2, 4 |
| *United States v. Yacoubian*, 24 F.3d 1 (9th Cir. 1994) | 8 |
| **Rules, Regulations and Statutes** | |
| Federal Rules of Civil Procedure: | |
| Rule 60(b) (5) | *passim* |
| United States Code: | |
| 18 U.S.C. § 3626(b) (3) | 14 |
| 18 U.S.C. § 3626(e) | 14 |
| **Other Authorities** | |
| Rebecca L. Brown, *Separated Powers and Ordered Liberty*, 139 U. PA. L. REV. 1513 (1991) | 6 |
| Robert N. Clinton, *A Mandatory View of Federal Court Jurisdiction: A Guided Quest for the Original Understanding of Article III*, 132 U. PA. L. REV. 741, 791 (1984) | 6 |




## TABLE OF AUTHORITIES—Continued


| | Page |
|---|---|
| Edward S. Corwin, *The Progress of Constitutional History Between the Declaration of Independence and the Meeting of the Philadelphia Convention*, 30 AM. HIST. REV. 511, 514-17 (1925) | 5 |
| *Judicial Action By the Provincial Legislature of Massachusetts*, 15 HARV. L. REV. 208 (1902) | 5 |
| Mark Tushnet and Larry Yackle, *Symbolic Statutes and Real Laws: The Pathologies of the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act*, 47 DUKE L.J. 1, 62 (1997) | 12 |
| Gordon S. Wood, THE CREATION OF THE AMERICAN REPUBLIC *1776-1787*, at 154-56, 407-08 & n.24 (1998) | 5 |
| THE FEDERALIST PAPERS Nos. 47, 48, 78 (Clinton Rossiter 1961) | 5, 6 |

IN THE

# Supreme Court of the United States

---

Nos. 99-224 and 99-582

---

CHARLES B. MILLER, *et al.*,
*Petitioners,*

v.

RICHARD A. FRENCH, *et al.*,
*Respondents.*

---

**On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit**

---

## BRIEF OF AMICUS CURIAE PLAINTIFF CLASS OF PRISONERS IN *TAYLOR v. STATE OF ARIZONA* IN SUPPORT OF RESPONDENTS

---

### INTEREST OF AMICUS

The *amicus curiae* respectfully submit this brief in support of the respondents and urge affirmance of the Seventh Circuit's opinion.[1] The *amici* are inmates in the Arizona State Prison System and members of the certified class of plaintiffs in *Taylor v. State of Arizona*, CIV 72-21 and 72-58 PHX RCB (D. Ariz.). They have been litigating issues under the PLRA over the past four years

---

[1] Pursuant to Supreme Court Rule 37.6, the *amicus curiae states* that no counsel for any party to this dispute authored this brief in whole or in part and no person or entity, other than *amicus curiae* or its counsel, made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this amicus brief and their letters of consent have been filed with the Clerk of this Court.

and their rights may be substantially affected by the Court's decision in this matter. They also have experienced, firsthand, the considerable difficulties imposed by the PLRA's automatic stay provision.

## SUMMARY OF ARGUMENT

We deal with an act of Congress which, by design, directs a federal court to suspend its own existing judgment. The issue is whether such a direction violates separation of powers or due proces.

The subject, particularly the reasoning of the opinions below and the applicability of *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), is well covered by others. We, therefore, limit our discussion to three points: (1) the history underlying the separation of powers principles at issue; (2) whether the PLRA, in effect, imposes a "new reopening requirement" on final judgments in violation of *Plaut v. Spendthrift Farms, Inc.*, 514 U.S. 211 (1995); and (3) the devastating practical burden the automatic stay provision imposes upon prisoners in defending their existing judgment rights.

The following summarizes our arguments on these points:

1. The PLRA's automatic stay provision is a blunt example of the type of legislative interference with final judgments that led the Framers to separate the legislative from the judicial power via Article III of the Constitution.

2. The automatic stay provision violates the separation of powers principles set forth in *Plaut*. In *Plaut*, this Court held that, once a judgment becomes final, Congress may not subject it to new reopening requirements that did not exist when the judgment was pronounced. 514 U.S. at 234. The issue, therefore, is whether a consent decree imposing prospective relief (the main target of the PLRA) is a "final" judgment. This Court has already answered that question, holding, in a prison conditions case, that "a consent decree is a final judgment that may be reopened only to the extent equity requires." *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 391 (1992).



3. Courts indeed may suspend, stay, modify or terminate judgments imposing prospective relief if they conclude that continued operation of the judgment would be inequitable. Thus, for example, a court may suspend, stay, modify or terminate relief if a change in law has occurred that would make it inequitable to continue enforcing the judgment prospectively—*e.g.*, if a change in law has occurred that eliminates the original legal basis or need for the prospective relief. *See, e.g., Pennsylvania v. The Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 429-30 (1855). But, as a matter of separation of powers, the decision of whether continued enforcement would work inequity is for the courts, not Congress, to make. The automatic stay provision is not a change in law that would make it inequitable to continue enforcing the decree. It is, instead, a legislative mandate to reopen and suspend final judgments of Article III courts.

4. The automatic stay provision imposes such hardships on inmates that, as a practical matter, their judgment rights will be forfeited. This, in turn, both implicates Due Process considerations and the power of Article III courts to issue "final" judgments.

## ARGUMENT

### I. THE AUTOMATIC STAY PROVISION VIOLATES SEPARATION OF POWERS

#### A. The History Defining the Separation of Powers Doctrine

The separation of powers principles invoked by the Seventh Circuit and relied upon by respondents are largely embodied in three cases: *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792), *Klein* (1871) and *Plaut* (1995). But these cases are merely applications, and not an exhaustive codification, of the separation of powers philosophy and principles they rest upon.

All three cases—cases spanning our Nation's entire constitutional history—directly or indirectly recognize limits on the power of Congress to affect final judgments of Article III courts. The source of their holdings is obviously not mere citation to one another or, for that matter, to case law principles at all. Rather, this Court has consistently invoked the emphatic history that prompted the Framers to separate the legislative from the judicial power. Much of this history was reviewed by this Court in *Plaut*, 514 U.S. at 218-25, and warrants consideration in analyzing the constitutionality of the automatic stay provision.

"The Framers of our Constitution lived among the ruins of a system of intermingled legislative and judicial powers." *Id.* at 219. Seeing themselves as "last courts of equity," colonial legislatures frequently enacted laws setting aside judgments, ordering new trials, granting new privileges of proceeding to one party, and reopening controversies that a court would not reopen so that the legislature's will could be taken into account. *Id.* at 219-22. The exact mechanisms of legislative interference varied, and so did the types of cases in which interference occurred. *See* Gordon S. Wood, THE CREATION OF THE AMERICAN REPUBLIC *1776-1787*, at 154-56, 407-08 & n.24 (1998) (discussing examples of excessive legislative involvement in private controversies, "even in some instances in private cases involving decisions in equity"); Edward S. Corwin, *The Progress of Constitutional History Between the Declaration of Independence and the Meeting of the Philadelphia Convention*, 30 AM. HIST. REV. 511, 514-17 (1925) (noting legislative interference in cases involving fraudulent transactions, defective titles, ugent sales of property "and the like"); *Judicial Action By the Provincial Legislature of Massachusetts*, 15 HARV. L. REV. 208 (1902) (collecting 18th century instances of legislative interference with judgments, including instances in which the legislature granted a party relief in equitable cases already final). The laws sometimes attacked judgments themselves and sometimes operated against the relief called for by those judgments. *See* Corwin, *supra*, at 517 ("Between legislation of this species and outright interferences with the remedial law there was often little to distinguish.").



These practices increased during the years between the American Revolution and the Constitutional Convention as legislatures actively targeted judgments favoring persons disloyal to the Revolution. *Id.* at 514-17; *accord Plaut*, 514 U.S. at 219-20. In response, Madison complained that the "legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex." THE FEDERALIST No. 48 (citing Jefferson's complaints about legislative interference with judgments). The Framers were particularly concerned about such legislative interference because it usually impacted the disfavored disproportionately—*i.e.*, it was a threat to the Framers' fundamental motivating concept of individual liberty. *See* THE FEDERALIST Nos. 47, 48, 78

*see generally* Rebecca L. Brown, *Separated Powers and Ordered Liberty*, 139 U. PA. L. REV. 1513 (1991).

Importantly, the Framers recognized that no clear rules could be drawn to prevent improper legislative interference with final judgments. *See* THE FEDERALIST No. 48 ("[The legislature's] constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with greater facility, mask, under complicated and indirect measures, the encroachments it makes on the coordinate departments. . . . [A] mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard . . ."); *see also Northern Pipeline Constr. v. Marathon Pipe Line Co.*, 458 U.S. 50, 83-84 (1982) (plurality op.) (noting that the separation of powers doctrine requires "delicate accommodations").

In debating the Constitution, the Framers specifically rejected a proposal that the Constitution provide that "the Judicial power . . . be exercised in such manner as the Legislature shall direct," Robert N. Clinton, *A mandatory View of Federal Court Jurisdiction: A Guided Quest for the Original Understanding of Article III*, 132 U. PA. L. REV. 741, 791 (1984), and instead were motivated by a "sharp necessity to separate the legislative from the judicial power," *Plaut*, 514 U.S. at 221. Thus, by vesting the judicial power in the courts and by withholding that power from Congress, the Framers intended to preclude—in a meaningful fashion—legislative interference with final judgments.

This history had led this Court to view Congressional encroachments "with an eye to the[ir] practical effect" and to, where necessary, create "high walls" to ensure that Congress does not seep away judicial authority through aggrandizing exercises of Article I power. *Plaut*,



514 U.S. at 239-40; *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851 (1986); *see also Northern Pipeline*, 458 U.S. at 83-84 ("[S]ubstantial inroads into functions that have traditionally been performed by the Judiciary cannot be characterized merely as incidental extensions of Congress' power to define rights that it has created. Rather, such inroads suggest unwarranted encroachments upon the judicial power of the United States, which our Constitution reserves for Art. III courts.").

### B. The Constitutional History and *Plaut* Condemn the Automatic Stay Provision

Constitutional condemnation of the automatic stay provision does not depend on a finding that the case falls within the four corners of *Hayburn's Case*, *Klein* or *Plaut*. As explained, those cases merely flow from a separation of powers design that the Framers intended to be broad enough to guard against unwarranted legislative encroachments, "both complicated and indirect" and incapable of comprehensive demarcation. That said, the principles laid down in *Plaut* are themselves broad enough to invalidate the PLRA.

This Court held in *Plaut* that Congress lacks the power to order federal courts to reopen final judgments of Article III courts. In the Court's words, a "legislative instruction to reopen impinges upon the independent constitutional authority of the courts." 514 U.S. 211, 234. While Congress may alter substantive law or enact additional reopening standards, such as those in Civil Rule 60(b), to guide future cases, Congress may not subject judgments that are already final "to a reopening requirement which did not exist when the judgment was pronounced." *Id.*

There are three sub-issues: (1) whether the automatic stay provision serves as a legislative mandate to reopen

final judgments; (2) whether the law operates retroactively within the meaning of *Plaut*; and (3) whether the automatic stay provision is the type of change in law that would render it inequitable not to "stay" judgments when the law applies (*i.e.*, the *Wheeling Bridge* issue).

### 1. *The Automatic Stay Provision Operates to Reopen Final Judgments*

The separation of powers rule set forth in *Plaut* requires that the judgment at issue be "final." This Court in *Plaut* held that finality for separation of powers purposes is determined by the same rule as finality for other purposes—*i.e.*, whether the judgment is still appealable. 414 U.S. at 227. Under this standard there is no doubt that the *French* decree is final or that the automatic stay provision applies to other final judgments.

The argument has been made, however, that consent decrees imposing prospective relief are never truly "final" for separation of powers purposes because they eventually may be modified or terminated by the court that entered them. Accordingly, the argument is that they are never sufficiently final to come within the *Plaut* rule.

But this Court has already ruled, in a prison conditions case that, notwithstanding changes in the law, "*a consent decree is a final judgment that may be reopened only to the extent equity requires.*" *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 391 (1992) (emphasis added); *see also United States v. Yacoubian*, 24 F.3d 1, 8 (9th Cir. 1994) (stating that a judgment of non-deportation was a final judgment "for separation of powers purposes" once the time for appeal expired); *Stone v. City and Cty. of S.F.*, 968 F.2d 850, 854 (9th Cir. 1992) ("A consent decree is considered a final judgment despite the fact that the district court retains jurisdiction over the case.").



*Rufo* is dispositive on whether consent decrees are "final" judgments. And *Plaut* itself directly refutes the argument that a consent decree is somehow nonfinal for separation of powers purposes only because it remains subject to equitable modification by the court that entered it. As this Court emphasized, the fact that courts may reopen a final judgment for equitable reasons does not mean that Congress can impose a "legislative mandate-to-reopen" for Congress' reasons. 514 U.S. at 233.

Thus, this Court's precedent provides that consent decrees are "final" judgments even though the district court retains jurisdiction and even though the judgment remains subject to reopening by the district court for equitable reasons.

### 2. *The Automatic Stay Provision Operates Retroactively*

The argument is made that the stay provision operates only on the prospective relief called for by the judgment and, therefore, does not retroactively impose a new reopening requirement. Not so. Under *Plaut*, the relevant retroactivity issue is whether Congress has subjected a final judgment to a reopening standard that did not exist *when the judgment was pronounced*:

> The relevant retroactivity, of course, consists not of the requirement that there be set aside a judgment that has been rendered *prior to its being set aside*—for example, a statute today which says that all default *judgments rendered in the future* may be reopened within 90 days after their entry. In that sense, all requirements to reopen are "retroactive and the designation is superfluous. . . . The finality that a court can pronounce is no more than what the law in existence *at the time of the judgment* will permit it to pronounce. If the law then applicable says that the judgment may be reopened for certain

> reasons, that limitation is built into the judgment itself, and its finality is so conditioned. The present case, however, involves a judgment that Congress *subjected to a reopening requirement which did not exist when the judgment was pronounced.*

*Id* at 233-34 (some italicized emphasis added); *id.* at 240 ("Section 27A(b) is unconstitutional to the extent that it requires federal courts to reopen final judgments entered before its enactment."); *see also Taylor v. United States*, 181 F.3d 1017, 1024 n.13 (9th Cir. 1999) (en banc) (op. of Rymer, J.) ("Thus, . . . under the PLRA's definition, the congressional directive to terminate [a consent decree] unless it is the minimum necessary to correct a violation goes well beyond the reopening possibilities that the parties could reasonably have expected in 1973. As such, the PLRA definition of 'consent decree' would itself be impermissibly applied retroactively if its effect were to make the *Taylor* judgment anything other than a final judgment 'that may be reopened only to the extent that equity requires' pursuant to Rule 60(b) under *Rufo*.").

The automatic stay provision thus fails because it does not merely set forth reopening standards for "judgments rendered in the future," but instead reopens and suspends relief under judgments already final. Congress cannot do that.

### 3. Wheeling Bridge *Is Inapplicable*

Before the PLRA, the way to reopen final judgments was through a motion brought under Rule 60(b). *See, e.g., Rufo*, 502 U.S. at 388-91; *Hook v. State of Arizona*, 972 F.2d 1012, 1016-17 (9th Cir. 1992); *see also Plaut*, 514 U.S. at 233-34 (noting that Congress may enact additional reopening standards to supplement Rule 60(b)'s equitable standards for "judgments rendered in the future"). As *Plaut* noted, Rule 60(b) codifies the courts'



"inherent and discretionary power . . . to set aside a judgment whose enforcement would work inequity." 514 U.S. at 233-34. Thus, built into the *French* decree is the reopening standard of Rule 60(b)(5), which posits that a court may relieve a party from a final judgment imposing prospective relief when "it is no longer equitable that the judgment should have prospective application."

In certain instances, courts have modified or terminated relief under injunctions or decrees because, in light of a change in law, it would be inequitable not to modify or terminate the decree. Thus, when a change in law eliminates the need for a decree by eliminating the original basis for the decree, courts have exercised their equitable discretion and modified or terminated the decree. *See, e.g., Pennsylvania v. The Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 429-30 (1855) (injunction entered because bridge was "inconsistent with and in violation of the Acts of Congress;" court later dissolved injunction because the law had "been modified by competent authority, so that the bridge is no longer an unlawful obstruction"); *System Federation No. 91 v. Wright*, 364 U.S. 642, 651 (1964) (consent decree entered to enjoin discrimination against non-union workers because the Railway Labor Act prohibited such discrimination; decree later terminated because it would be "inequitable" to enforce it after Congress amended the Act to allow such discrimination). In these cases, changes in the law eliminated the original basis—indeed, the need—for the injunction. Continuing to enforce the decrees, therefore, would have been inequitable.

Thus, if a change in law renders it inequitable to continue enforcing a decree (in whole or in part), then a court should exercise its historical power to alter the decree in a manner designed to cure the inequity. That—and no more than that—is *Wheeling Bridge's* legacy. *See,*

*e.g.*, *Taylor*, 181 F.3d at 1025 (op. of Rymer, J.) ("The important thing about *Wheeling Bridge II* is that it was the *Court* that made this decision, exercising *its* discretion, not Congress that directed the court to reopen and terminate, applying newly enacted standards.") (emphasis in original); Mark Tushnet and Larry Yackle, *Symbolic Statutes and Real Laws: The Pathologies of the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act*, 47 DUKE L.J. 1, 62 (1997) (stating that this interpretation of Rule 60(b) "explains the limits of *Wheeling Bridge's* holding"). "In a nutshell, Congress may change the law and, in light of changes in the law or facts, a *court* may decide in its discretion to reopen and set aside a consent decree under Fed. R. Civ. P. 60(b), *see Rufo*, 502 U.S. at 383-84, or refuse to enforce an executory decree pursuant to its inherent power, *see Wheeling Bridge II*, 59 U.S. (18 How.) at 431-32, but *Congress* may not *direct* a court to do so with respect to a final judgment (whether or not based on consent) without running afoul of the separation of powers doctrine. *See Plaut*, 514 U.S. at 227." *Taylor*, 181 F.3d at 1024.

Importantly, however, this Court has emphasized that not all changes in law will justify modifying or terminating relief under a decree; after all, a decree is a "final judgment that may be reopened only to the extent equity requires." *Rufo*, 502 U.S. at 391. The automatic stay provision clearly is not a change in law of the type that would render it inequitable to enforce existing consent decrees.

Common sense makes clear that the automatic stay provision is far different than statutory amendments allowing a bridge over a public waterway (*Wheeling*) or changing the federal laws governing union discrimination (*System*



*Federation*). In response to those laws, courts terminated or modified injunctions or decrees that had been based on furthering statutory objectives that had been changed. *See, e.g., System Federation*, 364 U.S. at 651 ("[I]t was the Railway Labor Act, and only incidentally the parties, that the District Court served in entering the consent decree now before us."). When the underlying reason for the injunctions went away due to a change in law, the courts recognized that it would be inappropriate not to modify the relief under the injunction. *See id.* ("The court must be free to continue to serve the objectives of the Act when its provisions are amended.").

By contrast, the PLRA's automatic stay provision is not a change in law that eliminates the need for an otherwise final judgment to be applied prospectively, or that creates an "equitable" reason requiring that the relief be "stayed." The provision neither legalizes conduct that the decree was specifically entered to prevent nor, conversely, illegalizes conduct required by the decree. *See, e.g., Rufo*, 502 U.S. at 388. Indeed, is designed to the law circumvent existing reopening standards by adding a new reopening requirement—a mandate that certain judgments be stayed unless prisoners (and courts) meet newly imposed conditions within a certain time period. Under *Plaut*, while Congress may enact reopening rules for judgments entered in the future, it crosses constitutional boundaries when it orders that the rules be applied to judgments already final. That is precisely the case here.

In sum, pre-PLRA final consent decrees are not subject to all changes in the law, but rather may be affected only to the extent courts conclude that changes in the law render it inequitable to continue enforcing the decree. *See Rufo*, 502 U.S. at 388-91; FED R. CIV. P. 60(b)(5). *Plaut* holds that though *courts* may reopen final judgments

for equitable reasons, that does not mean that Congress may itself suspend or order courts to reopen final judgments for *Congress'* reasons. The automatic stay provision is an improper reopening requirement that did not exist when the *French* decree became final, does not operate to render enforcement of the decree inequitable and, therefore, is unconstitutional.

### C. The Automatic Stay Provision Imposes Undue Burdens on Prisoners' Judgment Rights

The automatic stay provision is something of a cruel joke. The provision relieves prisons of their duties under judgments unless, within thirty or, in some cases, ninety days, the prisoners manage to demonstrate and the district court specifically finds that the relief required by the judgment is necessary to correct an ongoing violation of a federal right, extends no further than necessary to correct the violation and the relief is narrowly drawn and the least intrusive means available to correct the ongoing violation. 18 U.S.C. §§ 3626(b)(3), 3626(e). But virtually no parties can honestly meet these standards, even within the longer ninety-day period.

First, almost by definition, most existing consent decrees were largely the product of settlement and were entered before any finding of unconstitutional conduct. In virtually all such decrees the relief was negotiated and there was no reason for it to have been the "least intrusive" available to correct the alleged constitutional or other violation. The likelihood that relief stipulated to years ago happens today to be the least intrusive means available to remedy an ongoing violation is basically nil. Properly understood, the PLRA simply provides that prisoners' judgment rights will be suspended unless the prisoners can relitigate and prevail within ninety days on issues they resolved via settlement years ago.



Second, even assuming a good record from years ago, prisoners still almost certainly cannot win. Absent some judicial fudging in applying the PLRA's standards or the existence of a very recent record, there is no chance for prisoners to overcome the practical hurdles.

For example, there is no guarantee that the prisoners will be represented by counsel when a motion to terminate is filed. That was the case in *Taylor*: a judgment had been entered in 1973; class counsel had withdrawn in 1980; and the State of Arizona had honored the judgment without further proceedings into the 1990s. When the motion to terminate was filed, the district court had to appoint counsel. Naturally, reasonable delay occurred in locating counsel, and appointed counsel was in no position to put together a case almost from scratch to meet the PLRA's standards.

Even assuming the prisoners are represented from the outset by counsel, and even assuming that the judgment was issued in recent years, the outcome usually will be no different. Consent decrees often provide wide-ranging relief, frequently involving multiple prisons, jails or housing units. To prepare a case about the current rules, conditions, practices or other aspects at these multiple sources requires (1) particular clients [the class representatives years ago may not even be incarcerated today]; (2) meaningful access to those clients; (3) discovery from government officers or employees, though which ones may not be apparent; (4) evidence of unconstitutional conduct or practices beyond mere allegations or anecdotal proof; (5) analysis of whether the institutions are following their own rules and regulations; (6) legal research; (7) preparing for an evidentiary hearing; (8) briefing; (9) arranging for testimony from both government and incarcerated witnesses; and (10) a hearing. And, again, all this must add up to establishing that the relief imposed or agreed

upon in the past happens to be the least intrusive means anyway. No matter how intense the effort, this simply almost never will happen within thirty or even ninety days.

It also bears mentioning that expert assistance often is necessary in large institutional reform litigation; that counsel often will be working *pro bono*; that inmates' ability to actively assist their counsel and participate in advocacy is severely limited; that the relevant proof is almost fully within the custody and control of the defendants; and that the prisons often are located in outlying or rural areas. These factors further impair prisoners' rights to defend their judgment rights.

In most circumstances, prisoners will be better off simply forfeiting their existing judgment rights and starting over. At least then they will not be rushed into a hearing prematurely or forced to try to shape existing evidence to back up findings or relief provided on a totally different record many years earlier.

These practical blockades cannot easily be removed by even the most diligent, knowledgeable and skilled district court judges. Under the circumstances, counsel cannot reasonably be expected to put together the kind of proof necessary to meet the PLRA's standards within ninety days. The law's purpose is perfectly transparent: to terminate past judgments favoring prisoners. Although politically popular—as were the laws condemned by the Framers and by this Court in *Klein* and *Plaut*—the tactic is unconstitutional.



## CONCLUSION

The judgment of the Court of Appeals for the Seventh Circuit should be affirmed.

Respectfully submitted,

JOHN P. FRANK
*Counsel of Record*
RANDY PAPETTI
JON WEISS
LEWIS AND ROCA
40 North Central Avenue
Phoenix, Arizona 85004
(602) 262-5311
*Counsel for Amicus Curiae*

Mar 6 2000

Nos. 99-224, 99-582

Supreme Court, U.S.
FILED
MAR 6 2000
CLERK

In The

# Supreme Court of the United States

CHARLES B. MILLER, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, et al.,

*Petitioner,*

versus

RICHARD A. FRENCH, et al.,

*Respondents.*

UNITED STATES,

*Petitioner,*

versus

RICHARD A. FRENCH, et al.,

*Respondents.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## BRIEF OF LAW PROFESSORS ERWIN CHEMERINSKY, MICHAEL C. DORF, BARRY FRIEDMAN, JAMES LIEBMAN, GENE R. NICHOL, JR., AND MARCY STRAUSS AMICI CURIAE IN SUPPORT OF RESPONDENTS RICHARD A. FRENCH, et al.

ERWIN CHEMERINSKY
*Counsel of Record*
UNIVERSITY OF SOUTHERN CALIFORNIA LAW SCHOOL
699 Exposition Blvd.
Los Angeles, CA 90089-0071
(213) 740-2539

*Attorney for Amici Curiae*

BEST AVAILABLE COPY

26 pp

## QUESTION PRESENTED

The explicit language of section (e) of the Prison Litigation Reform Act, 18 U.S.C. §3626(e), compels a federal trial court which is confronted with a motion to terminate prospective relief in a civil action with respect to prison conditions to rule on the motion within a thirty (30) day period which can, for good cause other than calendar congestion, be extended for an additional sixty (60) day period. If the trial court fails to timely rule upon the motion, then the motion is temporarily granted in that all prospective relief is suspended pending final resolution by the trial court. Amici curiae present this Question as appropriate for resolving this case and encompassed by the grant of certiorari:

Whether 18 U.S.C. §3626(e) is unconstitutional as violating separation of powers because it retroactively suspends final federal court judgments imposed as remedies for constitutional violations.

## TABLE OF CONTENTS


Page

Question Presented ..... i

Table of Authorities ..... iii

Interests of Amici Curiae ..... 1

Summary of Argument ..... 2

ARGUMENT ..... 5

THE AUTOMATIC STAY PROVISION OF THE PRISON LITIGATION REFORM ACT IS UNCONSTITUTIONAL BECAUSE IT RETROACTIVELY SUSPENDS A FINAL JUDGMENT OF A FEDERAL COURT IMPOSED AS A REMEDY FOR CONSTITUTIONAL VIOLATIONS ..... 5

A. A Federal Statute Cannot Retroactively Suspend a Final Judgment or Compel a Federal Court to Do So, Particularly a Judgment Entered as a Remedy for Constitutional Violations ..... 5

B. The Automatic Stay Provision of the Prison Litigation Reform Act, §3626(e)(2), Is a Federal Law that Retroactively Suspends a Final Court Judgment Remedying Constitutional Violations ..... 10

C. The Automatic Stay Provision of the Prison Litigation Reform Act, §3626(e)(2), Is Unconstitutional ..... 16

Conclusion ..... 21




## TABLE OF AUTHORITIES


Page

CASES

*C. & S. Air Lines v. Waterman Corp.*, 333 U.S. 103 (1948) ..... 6

*Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986) ..... 5

*Cooper v. Aaron*, 358 U.S. 1 (1958) ..... 10

*French v. Duckworth*, 178 F.3d 437 (7th Cir. 1999), *cert. granted*, 120 S.Ct. 578 (1999) ..... 13

*French v. Owens*, 777 F.2d 1250 (7th Cir. 1985) .....4, 12

*Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998) ..... 13

*Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792) ..... *passim*

*Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991) ..... 7

*Landgraf v. USI Films Products*, 511 U.S. 244 (1994) .... 12

*Lauf v. E.G. Shiner & Co.*, 303 U.S. 323 (1938) ..... 15

*Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) ..... 16

*Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855) ..... 14

*Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. (13 How.) 518 (1852) .....4, 9, 14, 15

*Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) ...*passim*

*Robertson v. Seattle Audubon Society*, 503 U.S. 429 (1992) ..... 9

TABLE OF AUTHORITIES – Continued

Page

*Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) ..... 12

*United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872) ..*passim*

*United States v. Padelford*, 76 U.S. (9 Wall.) 531 (1869) ..... 8

STATUTES

18 U.S.C. §3626 ..... *passim*

29 U.S.C. §107 ..... 17

OTHER AUTHORITIES

Ira Bloom, *Prisons, Prisoners, and Pine Forests: Congress Breaches the Wall Separating Legislative from Judicial Power*, 40 Ariz. L. Rev. 389 (1998) ..... 19

Henry Hart, *The Power of Congress to Limit Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 Harv. L. Rev. 1362 (1953) ..... 10

Laurence H. Tribe, *American Constitutional Law* (3d ed. 2000) ..... 9



## INTERESTS OF AMICI CURIAE[1]

Amici curiae are law professors who specialize in the fields of Constitutional Law and Federal Courts and write this brief out of the hope that their expertise might be helpful to the Court.

**Erwin Chemerinsky** is the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science, at the University of Southern California. He has authored treatises on both constitutional law and federal courts and many articles in these fields.

**Michael C. Dorf** is a Professor of Law and Vice Dean at Columbia University School of Law. Professor Dorf has co-authored a book on constitutional law and has written many articles concerning constitutional law and federal court jurisdiction.

**Barry Friedman** is a Professor of Law at Vanderbilt University Law School and a Visiting Professor of Law at New York University School of Law. He is the author of many articles on constitutional law and federal court jurisdiction.

**James Liebman** is the Simon H. Rifkind Professor at Columbia University School of Law. He is the author of *Habeas Corpus: Practice and Procedure*, a treatise on habeas

---

[1] Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for amici state that no counsel for a party authored this brief in whole or in part and that no person, other than amici or its counsel, made a monetary contribution to the preparation and submission of this brief.

corpus, and many articles on aspects of constitutional law and federal court jurisdiction.

**Gene R. Nichol, Jr.** is the Dean of the University of North Carolina School of Law and the William Rand Kenan, Jr. Professor of Law. He has written extensively on constitutional law and federal jurisdiction.

**Marcy Strauss** is a Professor of Law at Loyola Law School in Los Angeles, California. She is the author of many articles on constitutional law and federal court jurisdiction.

## SUMMARY OF ARGUMENT

This case is about one of the most important and basic principles of separation of powers: Congress cannot direct how a federal court rules in a specific case and especially cannot retroactively suspend a federal court's judgment. *See, e.g., Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995); *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872); *Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792).

Section 3626(e)(2) of the Prison Litigation Reform Act, 18 U.S.C. §3626, et seq., does exactly this. The Act authorizes government defendants in prison condition cases to move for termination of prospective court orders and allows a federal court to continue the injunctive relief only by making specific findings as to the need for such relief. Section (e)(2) provides that a federal court must decide upon a defendant's motion within 30 days or the existing final judgment of the court is automatically stayed. The law allows a federal court to extend the time



period by no more than 60 days, but provides that "[n]o postponement shall be permissible because of general congestion of the court's calendar." 18 U.S.C. §3626(e)(3).

Therefore, if the federal court does not rule within the 30, or at most 90, day period, the law requires the court, at least temporarily, to grant the government's motion to end the injunction. This Court long has ruled that it violates separation of powers for Congress to command that a federal court rule in favor of a particular litigant. *See, e.g., United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872).

Indeed, §3626(e)(2) is particularly pernicious from a constitutional perspective because it retroactively suspends final judgments of federal courts imposed as remedies for constitutional violations. A simple syllogism explains the unconstitutionality of §3626(e)(2):

> MAJOR PREMISE: A federal statute is unconstitutional if it retroactively suspends a final judgment or compels a federal court to do so.
>
> MINOR PREMISE: Section 3626(e)(2) is a federal statute that retroactively suspends a final judgment or compels a federal court to do so.
>
> CONCLUSION: Section 3626(e)(2) is unconstitutional.

The major premise of this syllogism has been established and followed since the earliest days of the nation. In *Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792), Justice Iredell declared that no federal court judgment is "liable to a revision, or even suspension, by the legislature itself." 2 U.S. (2 Dall.) at 412. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), reaffirmed this principle.

The minor premise of the syllogism also is clearly correct: §3626(e)(2) orders the suspension of final judgments of federal courts. Section 3626(e)(2) commands that federal courts grant defendants' motions to end injunctions against them if there is not a ruling on the motions within 30, or at the greatest 90 days. Under *Klein*, Congress cannot issue such a directive to federal courts to decide motions in a particular way. Moreover, in this case, the effect of §3626(e)(2) is to retroactively suspend a final judgment of a federal court. A federal district court issued a permanent injunction concerning the Pendleton Correctional Facility to remedy constitutional violations. *See French v. Owens*, 777 F.2d 1250, 1258 (7th Cir. 1985). Subsequently, the Prison Litigation Reform Act was enacted. An injunction in place before the Act is lifted solely by virtue of the statute.

The conclusion thus follows: §3626(e)(2) is unconstitutional. Congress cannot direct that federal courts decide cases in favor of the government, or any party, and Congress certainly cannot order the suspension of final federal court judgments. Congress, of course, under some circumstances may set time limits for court action, but never can these limits be enforced by Congress suspending final judgments of federal courts. In cases involving prospective relief under federal statutes, Congress can change the underlying substantive law and thereby cause courts to reconsider injunctions based on the prior law. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855). But no case decided by this Court ever has approved Congress suspending federal court orders imposed as remedies in constitutional



cases. According Congress such authority would dramatically undermine the judicial power as all court orders remedying constitutional violations could be suspended or ended by legislative action.

## ARGUMENT

### THE AUTOMATIC STAY PROVISION OF THE PRISON LITIGATION REFORM ACT IS UNCONSTITUTIONAL BECAUSE IT RETROACTIVELY SUSPENDS A FINAL JUDGMENT OF A FEDERAL COURT IMPOSED AS A REMEDY FOR CONSTITUTIONAL VIOLATIONS

#### A. A Federal Statute Cannot Retroactively Suspend a Final Judgment or Compel a Federal Court to Do So, Particularly a Judgment Entered as a Remedy for Constitutional Violations

*Amici curiae* submit this brief to urge this Court to affirm a basic and essential principle of separation of powers: Congress cannot retroactively overturn a final judgment of a federal court, either by legislatively ordering it suspended or by compelling a federal court to stay its prior judgment. This is a principle that has been recognized since the earliest days of the nation and it is crucial "both to protect the role of the independent judiciary within the constitutional scheme of tripartite government, . . . and to safeguard litigants' right to have claims decided by judges who are free from potential domination by other branches of government." *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 848 (1986) (citations and internal quotation marks omitted).

Thus it long has been firmly established that federal legislation cannot overturn or even suspend a final judgment of a federal court. In *Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792), Justice Iredell declared: "[No] decision of any court of the United States can, under any circumstance, in our opinion, agreeable to the constitution, be liable to a revision, or even suspension, by the legislature itself, in whom no judicial power of any kind appears to be vested." 2 U.S. (2 Dall.) at 412.

In *Hayburn's Case*, the Justices declared unconstitutional a federal law that allowed the Secretary of War to revise federal court determinations of the amount of benefits owed to Revolutionary War veterans. Although the Supreme Court never explicitly ruled the statute unconstitutional, five of the six Supreme Court justices, while serving as Circuit Court judges, found the law invalid. The justices explained that the law was unconstitutional because it meant that judicial orders could be "revised and controuled by the legislature, and by an officer in the executive department. Such revision and controul we deemed radically inconsistent with the independence of that judicial power which is vested in the courts." *Id.* at 411. *Accord C. & S. Air Lines v. Waterman Corp.*, 333 U.S. 103, 113 (1948) ("Judgments within the powers vested in courts by [Article III] may not lawfully be revised, overturned or refused faith and credit by another Department of Government.")

More recently, this Court emphatically reaffirmed the principle that it is unconstitutional for federal legislation to retroactively overturn final judicial orders. In *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), this Court



applied the principle of *Hayburn's Case* to find unconstitutional a federal statute that overturned a Supreme Court decision dismissing certain cases. In 1991, the Court ruled that actions brought under the securities laws, specifically §10(b) and Rule 10(b)(5) had to be brought within one year of discovering the facts giving rise to the violation and within three years of the violation. *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991). Congress then amended the law to allow cases to go forward that were filed before this decision if they could have been brought under the prior law.

In *Plaut*, this Court declared the new statute unconstitutional as violating separation of powers. Although the Court acknowledged that *Hayburn's Case* was distinguishable, the Court found *Hayburn's* underlying principle of finality applicable. Justice Scalia writing for the Court said that the Constitution "gives the Federal Judiciary the power, not merely to rule on cases, but to decide them." 514 U.S. at 244. The Court concluded that the "judicial power is one to render dispositive judgments," and therefore the federal law "effects a clear violation of separation-of-powers." *Id.* at 219, 225.

In *Plaut* this Court unequivocally held that Congress by statute cannot act retroactively to overturn or suspend an existing final court judgment. Justice Scalia, writing for the Court, stated: "Having achieved finality, however, a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable *to that very case* was something other than what the court said it was." *Id.* at 227 (emphasis in original).

Just as Congress cannot by legislation overturn a final judicial judgment, nor can it order that a federal court suspend or lift its own judgment. Indeed, in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872), this Court held that Congress cannot mandate how federal courts act in particular cases. In 1863, Congress adopted a statute providing that individuals whose property was seized during the Civil War could recover the property, or compensation for it, upon proof that they had not offered aid or comfort to the enemy during the war. The Supreme Court subsequently held that a presidential pardon fulfilled the statutory requirement of demonstrating that an individual was not a supporter of the rebellion. *United States v. Padelford*, 76 U.S. (9 Wall.) 531 (1869).

In response to this decision and frequent pardons issued by the president, Congress quickly adopted a statute providing that a pardon was inadmissible as evidence in a claim for return of seized property. Moreover, the statute provided that a pardon, without an express disclaimer of guilt, was proof that the person aided the rebellion and would deny the federal courts jurisdiction over the claims. The statute declared that upon "proof of such pardon . . . the jurisdiction of the court in the case shall cease, and the court shall forthwith dismiss the suit of such claimant." 92 Stat. 2076.

The Supreme Court held that the statute was unconstitutional. While acknowledging Congress' power to create exceptions and regulations to the Court's appellate jurisdiction, the Supreme Court said that Congress cannot direct the results in particular cases. The Court stated:



> "What is this but to prescribe a rule for the decision of a cause in a particular way?. . . . Can we do so without allowing one party to the controversy to decide it in its own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the judicial department in the cases pending before it?. . . . We think not. . . . We must think that Congress has inadvertently passed the limit which separates the legislative power from the judicial power." 80 U.S. at 146-47.

Thus, *Klein* stands for the basic proposition that Congress cannot dictate the results in specific cases.

Together, decisions such as *Hayburn's Case*, *Plaut*, and *Klein* establish a fundamental and essential principle of separation of powers: Congress cannot directly overturn or suspend final federal court judgments or order that federal courts take such an action. Professor Tribe clearly explained this separation of powers principle: "Congress can be said to usurp the judicial function and violate the separation of powers if it undertakes to resolve an art. III case or controversy with a party-specific legislative decree imposing restrictions of its own." Laurence H. Tribe, *American Constitutional Law* 285 n.86 (3d ed. 2000).

Congress certainly may change the substantive statutory law to be applied in future cases. *Robertson v. Seattle Audubon Society*, 503 U.S. 429 (1992). In cases involving injunctions under federal statutes, Congress can alter the underlying law and thereby cause reconsideration of the prospective relief. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855) (discussed more fully below in section B); *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. at 232. But what Congress never may do is

retroactively overturn or suspend a final judicial judgment or order federal courts to do this. Nor may Congress direct a federal court to decide a case in a particular manner.

To accord such authority to Congress would be to alter dramatically the federal balance of power. For instance, in *Cooper v. Aaron*, 358 U.S. 1 (1958), this Court affirmed a federal court's desegregation order, an injunction similar in character and type to the remedy imposed in this case. It is unthinkable that Congress, by statute, could have suspended the federal court's injunction or ordered the district court to lift it, even for a short period of time. Such legislation would strike at the very core of the federal judicial power. *See* Henry Hart, *The Power of Congress to Limit Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 Harv. L. Rev. 1362, 1402 (1953) (Congress cannot act in a manner that will destroy the essential function of the federal courts in the constitutional system).

### B. The Automatic Stay Provision of the Prison Litigation Reform Act, §3626(e)(2), Is a Federal Law that Retroactively Suspends a Final Court Judgment Remedying Constitutional Violations

The Prison Litigation Reform Act provides for the termination of prospective court orders concerning prison conditions two years after their entry, upon motion from the defendant, unless a federal court determines that the "prospective relief remains necessary to correct a current and ongoing violation of the federal right." 18 U.S.C. §3626(b)(2). The sole issue before the



Court in this case is the constitutionality of §3626(e)(2) which provides that a federal court must decide upon a defendant's motion within 30 days or the existing final judgment of the court is automatically stayed. The law allows a federal court to extend the time period by no more than 60 days, but provides that "[n]o postponement shall be permissible because of general congestion of the court's calendar." 18 U.S.C. §3626(e)(3).

Section (e)(2) compels that the court rule in favor of the government and lift the injunction if it cannot meet the requirements of §3626 within 30, or at most 90, days. This is Congress directing a result for a particular party, at least temporarily, in constitutional litigation. This is exactly what *Klein* forbids. It obviously would be unconstitutional under *Klein* for Congress to enact a law requiring that federal courts decide all motions for summary judgment in civil rights cases within 90 days and mandating that if a court fails to do so it must rule in favor of the government. This is what §3626(e)(2) does in compelling the court to grant relief to the government by lifting the injunction against it if the court does not act within the 30/90 day period.

Moreover, and constitutionally even worse, §(e)(3) does this retroactively, ordering that the federal court rule in favor of the government by suspending an existing injunction. In applying the separation of powers principle described above to the automatic stay provision in §3626(e)(2), this Court should ask three questions: 1) Is there a final judgment of a federal court? 2) Is the federal statute being applied retroactively? 3) Does the federal statute suspend a final judgment of a federal court or order a federal court to do this? If the answer to all three

questions is affirmative, the law is clearly unconstitutional under *Hayburn's Case*, *Plaut*, and *Klein*.

All three of these factors unquestionably are present here. First, there is no doubt in this case that the federal district court entered a final judgment concerning the Pendleton Correctional Facility and that the injunction was affirmed by the United States Court of Appeals for the Seventh Circuit. *French v. Owens*, 777 F.2d 1250, 1258 (7th Cir. 1985). It, of course, is firmly established that such court orders are final judgments of federal courts. *See Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992). *Rufo* is explicit that the ability of a court of equity to reconsider injunctive relief does not lessen its status as a final judgment. *Id.* at 391. In fact, all federal court judgments in civil cases are potentially subject to reconsideration pursuant to Federal Rule of Civil Procedure 60(b), but they nonetheless, of course, are regarded as final judgments.

Second, nor is there question that §3626(e)(2) is being applied retroactively in this case. The federal court order and judgment concerning the Pendleton Correctional Facility were entered before the Prison Litigation Reform Act was enacted in 1996. This is not Congress attempting to regulate the content and terms of future injunctions to be issued by the federal courts. Rather, this is a federal law that applies retroactively to judgments entered before its adoption. *See Landgraf v. USI Films Products*, 511 U.S. 244, 270 (1994) (retroactive legislation is that which "attaches new legal consequences to events completed before its enactment.")



Third, §3626(e)(2) suspends a federal court judgment if a federal court does not act within 30 days of a defendant's motion, a time period which can be extended by no more than 60 days. There are only two possible ways to characterize §3626(e)(2): either it is a federal law that directly suspends final judgments if a court does not act within the time limits or it is a federal law that commands federal courts to issue a stay of their prior judgments if the court does not act within the 30/90 day time periods. Either characterization is a federal law that effectively suspends a final federal court judgment and thus violates separation of powers.

The final judgment of the federal court in this case is operative and in effect until the federal law, §3626(e)(2), mandates its suspension. *Hayburn's* case expressly declares that Congress cannot mandate "suspension" of a federal court order. 2 U.S. (2 Dall.) at 412. *Plaut* and *Klein* are clear that Congress cannot order courts to do this. For this reason, the Sixth Circuit properly found that requiring a federal court to comply with the automatic stay provision in §3626(e)(2) violates separation of powers because it is "direct legislative suspension of orders of article III courts." *Hadix v. Johnson*, 144 F.3d 925, 941 (6th Cir. 1998). Similarly, the Court of Appeals in this litigation correctly reasoned that "(e)(2) violates the separation of powers principle because it is a direct legislative suspension of a court order." *French v. Duckworth*, 178 F.3d 437, 446 (7th Cir. 1999), *cert. granted*, 120 S.Ct. 578 (1999).

The State of Indiana argues that §3626(e)(2) "neither legislatively suspends court orders nor mandates a rule of decision." Brief of Petitioners Charles B. Miller, et al., ("Pet.Br.") at 18. The State argues that section (e)(2) is

simply a procedural device that operates prospectively. This argument, however, ignores the purpose and effect of section (e)(2): valid final orders of the court, entered as a remedy to constitutional violations, will be suspended solely because of the mandate of the federal statute. This is exactly what *Plaut* forbids.

The cases relied upon by the State of Indiana, and *amici curiae* in support of the State, are distinguishable because none involved Congress retroactively suspending a final court judgment that had been imposed as a remedy for constitutional violations. For example, *Pennsylvania v. Wheeling & Belmont Bridge Co.*, did not involve a federal law that retroactively suspended a federal court decision. In fact, that decision expressed the separation of powers principle that is at stake in this case. The Court declared: "[I]t is urged, that the act of Congress cannot have the effect and operation to annul the judgment of this court already rendered, or the rights determined thereby. . . . This, as a general proposition, is certainly not to be denied, especially as it respects adjudication upon the private rights of parties. When they have passed into judgment the right becomes absolute, and it is the duty of the court to enforce it." 59 U.S. (18 How.) at 431.

*Wheeling Bridge* involved a court order requiring that a bridge be raised or removed because it was a hazard to navigation and a public nuisance in its existing condition. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. (13 How.) 518 (1852). Congress subsequently amended the law to legalize the bridge. The Court then upheld this as constitutional based on Congress' authority to alter the substantive law that was the basis for the injunction.



*Wheeling Bridge* thus stands for the simple proposition that where Congress has the authority to alter the underlying substantive law relied upon for prospective relief, a court has the authority to reconsider its earlier order in light of the change in the law. This is what *Plaut* was referring to when it cited *Wheeling Bridge* as allowing Congress to alter "the prospective effect of injunctions entered by Art. III courts." 514 U.S. at 232. In this case, however, the underlying substantive law is the Constitution, obviously not subject to change by Congress. Moreover, *Wheeling Bridge* did not involve Congress mandating the suspension of any federal court order.

Similarly, the other examples relied upon by the State and *amici* involved situations where Congress prospectively modified federal court authority in statutory cases. For instance, the State invokes *Lauf v. E.G. Shiner & Co.*, 303 U.S. 323 (1938), which upheld a federal law that required specific federal court findings before the court may issue an injunction in labor cases. Pet.Br. at 20-21. However, this federal law concerned federal court power in enforcing federal *statutory* rights. The law also was prospective in its application and suspended no final judgments. Here, though, §3626(e)(2) applies retroactively upon court orders in constitutional cases.

The distinction between Congress' authority to regulate prospectively in statutory cases and Congress' power to act retroactively in constitutional cases is crucial. Where Congress creates the right and provides the remedy, Congress has broad latitude to prescribe the terms and scope of the relief in future cases. But where the Constitution creates the right and a federal court has entered a final judgment, Congress does not have the

authority to suspend it. This Court has recognized the difference between constitutional and statutory rights relative to Congress' power, such as in stating: "[T]here is a critical difference between rights created by federal statute and rights recognized by the Constitution. . . . [S]uch a distinction seems to us to be necessary in light of the delicate accommodations required by the principle of separation of powers reflected in Article III." *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 83-84 (1982).

Simply put, §3626(e)(2) automatically suspends final judgments of federal courts in constitutional cases if a federal court does not act within 30/90 days of the defendant's motion. No case relied upon by Petitioners involved a federal law retroactively suspending a final judgment of a federal court in a constitutional case. *See Plaut v. Spendthrift Farm Inc.*, 514 U.S. at 240 ("We know of no previous instance in which Congress has enacted retroactive legislation requiring an Article III court to set aside a final judgment, and for good reason. The Constitution's separation of legislative and judicial powers denies it the authority to do so.")

### C. The Automatic Stay Provision of the Prison Litigation Reform Act, §3626(e)(2), Is Unconstitutional

Section 3626(e)(2) means that the federal court's judgment in this case must be suspended by the federal district court if it does not act within 30/90 days of the defendant's motion. A federal law that orders the suspension of a court order is unconstitutional, for the reasons



explained above, and thus *amici* urge this Court to affirm the Seventh Circuit. Congress is compelling federal courts to rule in favor of the government, and lift injunctions against them, if the courts cannot meet the time limits. Under cases such as *Klein*, Congress violates separation of powers when it directs the judiciary to decide cases in a particular way.

The State argues that Congress frequently sets time limits for court actions and §3626(e)(2) is no different. The State, for example, points to the time limits on temporary restraining orders in Federal Rule of Civil Procedure 65(b), which provides that a federal court's temporary restraining order automatically expires after 10 days, with one possible 10-day extension, if the court has not held a hearing with notice. Pet.Br. at 20. The State also points to the Norris-Laguardia Act, 29 U.S.C. §107, which provides that a temporary restraining order in a labor dispute "shall be effective for no longer than five days and shall become void at the expiration of said five days." Judge Easterbrook, in his dissent from the denial of a rehearing en banc, provided a long list of statutes that impose time limits on federal court judges. 178 F.3d at 451-453 (Easterbrook, J., dissenting).

No one denies that Congress can impose time limits on federal courts in some circumstances. However, what Congress cannot do is enforce the time limits by ordering the suspension of final court judgments. None of the other time limits mentioned by the State or described by Judge Easterbrook involved Congress *retroactively* mandating the stay of a federal court's final order and judgment. There may be many types of time limits that can be imposed, and even many ways of enforcing the limits,

but one thing that Congress clearly cannot do without violating separation of powers is compel suspension of a final federal court judgment.

Nor may Congress use time limits to direct results for particular parties as it has done here. A simple example is illustrative. It can be assumed that Congress has the constitutional authority to create a Term of the Supreme Court and that it could require that the Court decide all cases on its docket by June 30 of each year. However, it surely would be unconstitutional if the federal law said that all cases not decided by June 30 must be decided in favor of the government. Yet, that is exactly what §3626(e)(2) does: it imposes a time limit and requires that any case not resolved within it be decided in favor of the government by suspending the prior final judgment.

Moreover, whatever authority Congress has to set the terms and conditions of future injunctions, Congress cannot retroactively impose new requirements that have the effect of overturning final court orders. As this Court explained in *Plaut*: "It is no indication whatever of the invalidity of the constitutional rule which we announce, that it produces unhappy consequences when a legislature lacks foresight, and acts belatedly to remedy a deficiency in the law." 514 U.S. at 237.

Congress almost certainly could not have adopted a constitutional law that required federal courts to vacate every final judicial order concerning prison conditions two years after entry. This would be exactly what is forbidden by cases such as *Hayburn's Case*, *Plaut*, and *Klein*. Yet, the 30/90 days time period specified in section (e)(2) has virtually the same effect. As one commentator



explained concerning the provision: "Congress has reopened 'final decisions' by retroactive changes to the rules of decision, and virtually compelled a decision favorable to the governmental entity involved through the short time permitted for the judge to make the required findings necessary to support continuation of a consent decree." Ira Bloom, *Prisons, Prisoners, and Pine Forests: Congress Breaches the Wall Separating Legislative from Judicial Power*, 40 Ariz. L. Rev. 389, 410 (1998).

Indeed, as the Seventh Circuit noted, a government defendant, simply by delaying during the 30/90 day period can succeed in forcing the district court to suspend its earlier judgment. The Seventh Circuit observed: "Yet the state need only drag its feet or confront genuine difficulty in responding to requests for information that is relevant to the question whether the decree continues to be necessary, as defined by (b)(2) and (b)(3), in order to win its stay. . . . Section 3626 constrains the authority of the district courts to impose and sustain prospective relief." 178 F.3d at 444.

Thus, the practical effect of §3626(e)(2) is to order federal courts to rule in favor of defendants, at least on their motions to stay final court orders concerning prison conditions. This is exactly what cases such as *Plaut* and *Klein* forbid Congress from doing. To accord Congress this authority here in prisoner litigation, would mean that Congress could order the lifting of judicial orders in any cases, ranging from business litigation to school desegregation cases. It would give Congress unprecedented ability to not only specify time limits, but to enforce them by directing results and by lifting final judicial judgments.

In *Hayburn's Case*, in the earliest days of American history, Supreme Court declared that "revision and controul" of judgments by Article III courts is "radically inconsistent with the independence of that judicial power which is vested in the courts." 2 U.S. (2 Dall.) at 413 (opinion of Iredell, J.). Almost 200 years later, in *Plaut*, this Court said that "the doctrine of separation of powers is a *structural safeguard* rather than a remedy to be applied only when specific harm, or risk of specific harm, can be identified. In its major features (of which the conclusiveness of judicial judgments is assuredly one) it is a prophylactic device, establishing high walls and clear distinctions." 514 U.S. at 239. The Court found the federal law in *Plaut* "unconstitutional to the extent that it requires federal courts to reopen final judgments entered before its enactment." *Id.* at 240.

*Amici curiae* urge the Court to reaffirm these principles and to find §3626(e)(2) unconstitutional precisely because it requires federal courts to reopen final judgments – and indeed to suspend those judgments – entered before its enactment.



## CONCLUSION

For these reasons, the Court should affirm the judgment of the Seventh Circuit holding §3626(e)(2) of the Prison Litigation Reform Act unconstitutional.

Respectfully submitted,

ERWIN CHEMERINSKY
UNIVERSITY OF SOUTHERN
CALIFORNIA LAW SCHOOL
699 Exposition Blvd.
Los Angeles, CA 90089-0071
(213) 740-2539

*Attorney for Amici Curiae*